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# **APPENDIX 1**



# Order

June 17, 2020

160843-4

DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS/UNEMPLOYMENT  
INSURANCE AGENCY,  
Appellee,

v

FRANK LUCENTE,  
Claimant-Appellant,

and

DART PROPERTIES II, LLC,  
Employer-Appellee.

---

DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS/UNEMPLOYMENT  
INSURANCE AGENCY,  
Appellee,

v

MICHAEL HERZOG,  
Claimant-Appellant,

and

CUSTOM FORM, INC.,  
Employer-Appellee.

---

Michigan Supreme Court  
Lansing, Michigan

Bridget M. McCormack,  
Chief Justice

David F. Viviano,  
Chief Justice Pro Tem

Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

SC: 160843  
COA: 342080  
Macomb CC: 2017-000125-AE

SC: 160844  
COA: 345074  
Wayne CC: 18-003162-AE

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On order of the Court, the application for leave to appeal the October 15, 2019 judgment of the Court of Appeals is considered, and it is GRANTED. The time allowed for oral argument shall be 20 minutes for each side. MCR 7.314(B)(1).

The parties shall address whether the Court of Appeals erred in its analysis of §§ 32, 32a, and 62 of the Michigan Employment Security Act of 1936 (MESA), MCL 421.1 *et seq.*, when it held that: (1) the Unemployment Insurance Agency is not required to comply with the time requirements set forth in § 32a when seeking to recoup payment of fraudulently obtained benefits under § 62 of the Act; and (2) the label that the agency used on its decisions was not determinative of its ability to seek to recoup improperly obtained benefits.

Persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



p0610

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 17, 2020

Clerk

# **APPENDIX 2**

# Order

August 7, 2020

160843-4(77)

DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS/UNEMPLOYMENT  
INSURANCE AGENCY,  
Appellee,

v

FRANK LUCENTE,  
Claimant-Appellant,  
and

DART PROPERTIES II, LLC,  
Employer-Appellee.

---

DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS/UNEMPLOYMENT  
INSURANCE AGENCY,  
Appellee,

v

MICHAEL HERZOG,  
Claimant-Appellant,  
and

CUSTOM FORM, INC.,  
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Michigan Supreme Court  
Lansing, Michigan

Bridget M. McCormack,  
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Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

SC: 160843  
COA: 342080  
Macomb CC: 2017-000125-AE

SC: 160844  
COA: 345074  
Wayne CC: 18-003162-AE

On order of the Chief Justice, the motion of claimants-appellants to extend the time for filing their brief on appeal is GRANTED. The brief will be accepted as timely filed if submitted on or before September 9, 2020.



I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 7, 2020

Clerk

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# **APPENDIX 3**

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

STATE OF MICHIGAN,  
DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS (LARA),  
UNEMPLOYMENT INSURANCE AGENCY,  
Appellant,

vs.

FRANK LUCENTE  
AND  
DART PROPERTIES II LLC,  
Appellees.

C. A. No. 17-000125-AE

MAY 25 2017

PROOF OF SERVICE  
OF CERTIFICATION OF RECORD OF PROCEEDINGS OF  
MICHIGAN COMPENSATION APPELLATE COMMISSION

STATE OF MICHIGAN ) SS  
COUNTY OF MACOMB )

Emily Meredith, being first duly sworn, deposes and says that she is an employee of the Michigan Compensation Appellate Commission and that she served Jason Hawkins an Assistant Attorney General representing the State of Michigan, Department of Licensing and Regulatory Affairs (LARA), Unemployment Insurance Agency, with a true copy of the Certified Record of Proceedings of the Michigan Compensation Appellate Commission in the above-entitled appeal by delivery thereof to his office at Williams Building, 525 W. Ottawa, 4<sup>th</sup> Floor, Lansing, MI 48913, as well as mailing a true copy to the below-named parties by first-class mail, postage thereon fully prepaid, on May 24, 2017:

NAME

ADDRESS

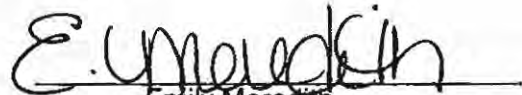
Frank Lucente  
(Appellee)

17371 Kingsbrooke Cr., Apt. 102  
Clinton Twp., MI 48038

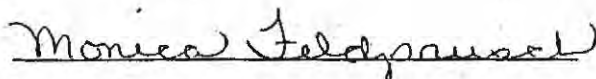
Dart Properties II LLC  
(Appellee)

500 Hogsback Rd.  
Mason, MI 48854

Further deponent sayeth not.

  
Emily Meredith

Subscribed and sworn to before me  
this 24th day of May, 2017



Monica Feldpausch  
Notary Public, State of Michigan  
County of Clinton  
My commission expires: 10/22/2018  
Acting in the County of Ingham

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

STATE OF MICHIGAN,  
DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS (LARA),  
UNEMPLOYMENT INSURANCE AGENCY,

Appellant,

vs.

C. A. No. 17-000125-AE

FRANK LUCENTE AND DART PROPERTIES II LLC,  
Appellees.

---

Mr. Jason Hawkins (P71232),  
Asst. Atty. Gen., repr., the U.A.  
TEL: 1-517-335-1950

Frank Lucente  
and  
Dart Properties II LLC,  
Appellees

CERTIFICATION

OF

AND

RECORD OF PROCEEDINGS

BY

MICHIGAN COMPENSATION APPELLATE COMMISSION

State of Michigan  
Michigan Compensation Appellate Commission  
525 West Allegan Street  
P. O. Box 30475  
Lansing, Michigan 48909  
TEL: 1-517-284-9300



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

STATE OF MICHIGAN,  
DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS (LARA),  
UNEMPLOYMENT INSURANCE AGENCY,

Appellant,

vs.

C. A. No. 17-000125-AE

FRANK LUCENTE

AND

DART PROPERTIES II LLC,

Appellees.

CERTIFICATION OF RECORD OF PROCEEDINGS

I, Emily Meredith, Clerk do hereby certify that attached hereto is a true and correct copy of the Record in the offices of the Michigan Compensation Appellate Commission in a matter known as Appeal Docket No. 16-014572-250597W & 16-014604-250598W and consisting of the following:

	Page No.
1. Transcript of testimony and proceedings before Administrative Law Judge Michael Wakeley on July 18, 2016 at Detroit, Michigan, and supporting exhibits. (Exhibits B, C, 5-9 & Miscellaneous Media) . . . . .	1-86 87-285
2. Administrative Law Judge's Decision rendered July 27, 2016. 16-014572 . . . . . 16-014604 . . . . .	 286-292 293-302
3. Appeal to Michigan Compensation Appellate Commission from Administrative Law Judge's decision filed August 26, 2016.	303-349
4. Claimant's Application for Oral Argument to Michigan Compensation Appellate Commission filed October 12, 2016.	350-352
5. Decision of Michigan Compensation Appellate Commission rendered March 15, 2017. 16-014572-250597W . . . . . 16-014604-250598W . . . . .	 353-356 357-361



Emily Meredith, Clerk

A copy of the **CERTIFIED RECORD OF PROCEEDINGS**

was mailed this 24th day of May,

A.D., 2017 to the following:

Macomb County Circuit Court

Mr. Jason Hawkins (P71232),

Asst. Atty. Gen., repr., the U.A.

Frank Lucente

and

Dart Properties II LLC,

(Appellees)

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MICHIGAN ADMINISTRATIVE HEARING SYSTEM

BUREAU OF HEARINGS

DIVISION OF UNEMPLOYMENT APPEALS

FRANK LUCENTE,

CLAIMANT

APPEAL DOCKET NO.: 2016-01460

DART PROPERTIES II, LLC,

EMPLOYER

\_\_\_\_\_ /

CASE NO. 1

Testimony taken and proceedings had in the above-entitled matter before Administrative Law Judge Michael Wakeley, at 3026 West Grand Boulevard, Cadillac Place, Detroit, Michigan 48202 on Monday, July 18, 2016 commencing at 8:30 a.m.

APPEARANCES:

FRANK LUCENTE

CLAIMANT

LAURA BRADSHAW TUCKER

CLAIMANT ADVOCATE

CHELSEA GILL

UIA CLAIMS EXAMINER

TRANSCRIBED BY:

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Theresa's Transcription Service  
P.O. Box 21067  
Lansing, Michigan 48909-1067  
(517) 882-0060

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## CHELSEA GILL

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1 Detroit, Michigan

2 Monday, July 18, 2016

3 \* \* \* \* \*

4 P R O C E E D I N G S

5 ALJ WAKELEY: This is docket number 16-014604  
6 for claimant Frank Lucente and employer Dart Properties.  
7 Today is July 18<sup>th</sup>, 2016. The time is 8:41 a.m. My name  
8 is Administrative Law Judge Mike Wakeley with the State  
9 Michigan. We are in person in the Detroit office of the  
10 Michigan Administrative Hearing System. I have the  
11 claimant, Frank Lucente, along with his attorney, Laura  
12 Bradshaw.

13 MS. BRADSHAW TUCKER: Tucker.

14 ALJ WAKELEY: Tucker.

15 MS. BRADSHAW TUCKER: Laura Bradshaw Tucker.

16 Sorry.

17 ALJ WAKELEY: And from the Unemployment  
18 Insurance Agency, Chelsea Gill. This morning we have two  
19 appeals scheduled, the one I just mentioned and also  
20 docket number 16-014572. What I'll do is hear all of the  
21 evidence for both of those cases during the first  
22 recording and cover both issues. I think there's an  
23 employment issue or unemployed issue and a fraud issue.  
24 We'll cover both of those during the original recording  
25 and then when we're finished with that I'll start a --



1 another recording because I'm required to create a record  
2 for each appeal number and I'll swear in the parties and  
3 just refer to the evidence already presented in the first  
4 hearing. And that will just take a couple of minutes at  
5 the conclusion of the first hearing. All right.

6 MS. BRADSHAW TUCKER: Okay. Your Honor, my  
7 understanding is we have initially basically a statute  
8 issue and then the misrepresentation fraud issue. Is that  
9 correct?

10 ALJ WAKELEY: Well, what I have is a late  
11 appeal issue --

12 MS. BRADSHAW TUCKER: Yes.

13 ALJ WAKELEY: -- related to two separate cases  
14 One is whether the claimant is eligible for benefits unde  
15 the unemployed statute and then related to that the Agenc  
16 said he misrepresented information intentionally so there  
17 was a fraud issue and penalties attached to that. So, th  
18 un -- the unemployed is one case --

19 MS. BRADSHAW TUCKER: I understand that.

20 ALJ WAKELEY: -- and then the fraud is the  
21 other.

22 MS. BRADSHAW TUCKER: (Multiple speakers)-- as  
23 far as the time we might want to do the whether we're her  
24 correctly first.

25 ALJ WAKELEY: I'll -- I'll address that once w

1 get through the preliminary issues.

2 MS. BRADSHAW TUCKER: I'm sorry. Well, we'll  
3 just do it the way you said.

4 ALJ WAKELEY: Sure.

5 MS. BRADSHAW TUCKER: Okay.

6 ALJ WAKELEY: There is a late appeal issue.  
7 that what you're referring to?

8 MS. BRADSHAW TUCKER: Yes.

9 ALJ WAKELEY: Right. There's a late appeal  
10 issue attached to both of those. And I'll explain how  
11 we're going to go through all --

12 MS. BRADSHAW TUCKER: All right.

13 ALJ WAKELEY: -- each of those issues in just  
14 minute. Mr. Lucente, I have your address listed as 17371  
15 Kingsbrooke Circle, Apartment 102, Clinton Township,  
16 Michigan 48038. Correct?

17 MR. LUCENTE: Yes, that is correct.

18 ALJ WAKELEY: All right. And I'll note the  
19 employer sent a notice that they would not be appearing  
20 for the hearing today. All right. Just the  
21 jurisdictional background, this case arose from the  
22 claimant's timely appeal to a January 19<sup>th</sup>, 2016 denial of  
23 request for redetermination which held the claimant's  
24 earlier protest to a redetermination issued December 1<sup>st</sup>,  
25 2010 was not received within one year from the date of



1 mailing.

2 Allegedly was -- the claimant's protest was  
3 received -- or, excuse me, his appeal was received on  
4 January 11<sup>th</sup>, 2016 and therefore the Agency could not  
5 consider the appeal under Section 32(a)(2) of the Michigan  
6 Employment Security Act. I'm going to ask the  
7 Unemployment Insurance Agency a little bit more about the  
8 background of these cases once we start. That's the only  
9 jurisdictional documents I have in this case so I'm going  
10 to ask them to provide a little more background on that.

11 But it appears the January 1<sup>st</sup>, 2010  
12 redetermination held the claimant ineligible for benefits  
13 under Section 48 of the Michigan Employment Security Act  
14 beginning February 16<sup>th</sup>, 2010 and then in the companion  
15 case again the Agency denied the claimant's appeal in a  
16 January 19<sup>th</sup>, 2016 denial of redetermination saying that  
17 his January 11<sup>th</sup>, 2016 appeal was more than -- or, was  
18 received more than one year after the Agency's last  
19 redetermination which was dated December 1<sup>st</sup>, 2010.

20 And then the underlying redetermination in the  
21 companion case was that the claimant had intentionally  
22 misrepresented information in order to obtain benefits in  
23 violation of Sections 62(b) and 54(b) of the Michigan  
24 Employment Security Act and fraud penalties were assessed  
25 under those statutes. All right.

1 So, procedurally what I'm going to do, I'll  
2 address the late appeal issue for both cases. My  
3 understanding is there was one appeal filed that applied  
4 to both adjudications or both issues meaning the  
5 eligibility issue and the fraud issue and then --

6 MS. BRADSHAW TUCKER: Yes.

7 ALJ WAKELEY: -- the appeal came in on the same  
8 date.

9 MS. BRADSHAW TUCKER: Yes. There's a little  
10 question on the date that even the notice of  
11 redetermination was sent because the -- what we have was a  
12 recreated notice of determination --

13 ALJ WAKELEY: Sure.

14 MS. BRADSHAW TUCKER: -- and it has a date of  
15 January 1<sup>st</sup>, 2010.

16 ALJ WAKELEY: Right. And we'll get in to --

17 MS. BRADSHAW TUCKER: At the time --

18 ALJ WAKELEY: We'll get in to that.

19 MS. BRADSHAW TUCKER: -- he was -- he -- the  
20 whole issue didn't even arise until February and  
21 --(undecipherable).

22 ALJ WAKELEY: Right. We'll get in to -- we'll  
23 get in to the details of that. But procedurally I intend  
24 to take up the late appeal issue for both cases --

25 MS. BRADSHAW TUCKER: (Undecipherable).



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1 ALJ WAKELEY: -- first. Normally I start with  
2 the claimant on that because the claimant has to prove he  
3 had good cause for a late appeal. Given the age of this  
4 case and the fact that I don't -- I'm not sure I have all  
5 the documents from way back in 2010 even in my file I'm  
6 going to hear from the Agency first to explain when its  
7 adjudications were issued and when the claimant sent --  
8 sent his appeals according to their file. After Ms. Gill  
9 testifies then the claimant will have a chance to ask her  
10 questions as well and then Ms. -- do you go by Ms.  
11 Bradshaw Tucker or just Ms. Tucker?

12 MS. BRADSHAW TUCKER: It's Bradshaw Tucker --

13 ALJ WAKELEY: Okay.

14 MS. BRADSHAW TUCKER: -- unfortunately, yeah.

15 ALJ WAKELEY: That's okay. So, Ms. Bradshaw  
16 Tucker, I'll have you present any testimony from the  
17 claimant regarding the late appeals and Ms. Gill will have  
18 a chance to ask the claimant questions on that as well.  
19 After we cover the late appeal issue we'll move on to the  
20 underlying issues. So, we'll go in the order of  
21 addressing the unemployed issue first, that's the  
22 eligibility issue as to whether Ms. Lucente was eligible  
23 to receive benefits in the relevant time frame --

24 MS. BRADSHAW TUCKER: Your Honor, we would  
25 actually waive. We acknowledge he was not eligible to



1 receive benefits --

2 ALJ WAKELEY: Okay.

3 MS. BRADSHAW TUCKER: -- and the issues are the  
4 penalty and the misrepresentation.

5 ALJ WAKELEY: Okay. Then following that we'll  
6 just move directly to the fraud issue. The Agency has the  
7 burden of proving that the claimant committed fraud,  
8 meaning the Unemployment Agency. So, Ms. Gill, at that  
9 point I'll have you present whatever evidence the Agency  
10 has in support of its fraud adjudication. And, Ms.  
11 Bradshaw Tucker, you'll have a chance to question Ms. Gill  
12 on her testimony as well. And then after that if you have  
13 any evidence on behalf of the claimant to present you may  
14 do so and then Ms. Gill will have a chance to question any  
15 witnesses you call.

16 MS. BRADSHAW TUCKER: (Undecipherable).

17 ALJ WAKELEY: Once I've heard all of the  
18 evidence presented during the hearing I'll review the case  
19 and I'll send out my written decision within the next 10  
20 days. I did receive documents from both the Unemployment  
21 Agency and the claimant prior to the hearing. Ms. Gill,  
22 did you receive the package of documents from the claimant  
23 that were sent in for the hearing?

24 MS. GILL: I did not.

25 ALJ WAKELEY: Okay. Ms. Bradshaw Tucker, did

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1           you -- did you send in --

2                   MS. BRADSHAW TUCKER: Yeah.

3                   ALJ WAKELEY: -- exhibits for the hearing?

4                   MS. GILL: Oh. Those exhibits? I do have  
5 those exhibits. I --

6                   ALJ WAKELEY: Okay.

7                   MS. GILL: I apologize.

8                   ALJ WAKELEY: Okay.

9                   MS. GILL: I have those.

10                  ALJ WAKELEY: All right. Great. And, Ms.  
11 Bradshaw Tucker, you have a copy of the Unemployment  
12 Agency's --

13                  MS. BRADSHAW TUCKER: Yes, I do.

14                  ALJ WAKELEY: -- Exhibit? Let me explain. I  
15 don't automatically enter these exhibits in to the  
16 hearing. I have reviewed them not in great detail. I  
17 generally know what they are. If either party wants me to  
18 consider some or all of these documents you need to offer  
19 them during the presentation of your case. I may ask for  
20 more information about them and then at that point I'll  
21 make a decision whether to admit the documents that you  
22 offered. All right. Ms. Bradshaw Tucker, do you have any  
23 questions about the hearing this morning before we start?

24                  MS. BRADSHAW TUCKER: No, I don't, your Honor.  
25 I would like again to place on the record if we have a



2016-01460

1 record that I do have a hearing deficiency and, Ms. Gill,  
2 I'm sorry, when you are asking questions if I could be  
3 looking at you and you could speak clearly and enunciate  
4 Thank you.

5 MS. GILL: Okay. Not a problem.

6 MS. BRADSHAW TUCKER: Thank you so much.

7 ALJ WAKELEY: All right. Ms. Gill, do you have  
8 any questions about the hearing before we start this  
9 morning?

10 MS. GILL: No, Judge.

11 ALJ WAKELEY: All right. I'll go ahead and  
12 swear in the two witnesses. Mr. Lucente and Ms. Gill,  
13 please raise your right hands. Do you solemnly swear or  
14 affirm that the testimony you give today will be the  
15 truth? Mr. Lucente?

16 MR. LUCENTE: I do.

17 ALJ WAKELEY: Ms. Gill?

18 MS. GILL: Yes, Judge.

19 (At this time, witnesses sworn, testified as follows:)

20 ALJ WAKELEY: All right. Thank you. Okay.  
21 Ms. Gill, I'm going to begin with you on the late appeal  
22 and jurisdictional issues for this case. And I'm going to  
23 start first with the unemployed issue.

24 MS. GILL: Mm-hmm.

25 CHELSEA GILL

1 (Called as a witness, previously sworn, testified as follows:)

2 EXAMINATION

3 BY ALJ WAKELEY:

4 Q Can you tell me when the Agency issue its first  
5 adjudication finding the claimant -- or, making a decision  
6 whether the claimant was eligible under the unemployed  
7 provisions?

8 A The record shows that the Agency issued the original  
9 determination on January 1<sup>st</sup> of 2010. That determination  
10 was re -- duplicated because that was in our old 3270  
11 prior computer system and on the trans -- on the  
12 conversion that happened October 1<sup>st</sup>, 2013 all of those old  
13 files were, let's say, still in the computer -- the old  
14 computer system and they made the transformation over to  
15 the new system. So, any of those informations we had to  
16 reprint and it -- it looks like -- appears that on  
17 November the 23<sup>rd</sup> of 2015 is when it was reprinted and  
18 reissued out to Mr. --

19 MR. LUCENTE: Lucente.

20 THE WITNESS: Lucente.

21 ALJ WAKELEY: Okay.

22 BY ALJ WAKELEY:

23 Q Do you have a copy of that document?

24 A That was in the exhibit -- I believe it's Exhibit 1 that  
25 was provided by the attorney, Ms. Bradshaw.



1 MS. BRADSHAW TUCKER: Actually I think my  
2 Exhibit 1 was application to extend benefits, but, yes, we  
3 do have a copy of the -- sorry. I just had it out, too.  
4 We have a copy of the original -- excuse me, the re-sent  
5 notice of determination and non-contestable payment of  
6 benefits. And we'll show that. I guess that would be  
7 Exhibit 1 for plaintiff.

8 ALJ WAKELEY: Well, hold on.

9 MS. BRADSHAW TUCKER: Do you need to see that?

10 THE WITNESS: I -- I have it  
11 --(undecipherable).

12 MS. BRADSHAW TUCKER: We all seem to have a  
13 copy of it. It was -- on my packet it was labeled Exhibit  
14 5, so.

15 ALJ WAKELEY: All right. So, I pulled out what  
16 was marked as Exhibit 5 in the claimant's exhibits.  
17 That's a four page document titled notice of  
18 redetermination with a mail date November 23<sup>rd</sup>, 2015.

19 THE WITNESS: And it has an original mail date  
20 of January 1<sup>st</sup>, 2010.

21 ALJ WAKELEY: Right. Is it -- that's the  
22 document that we're all talking about?

23 THE WITNESS: Yes.

24 ALJ WAKELEY: Okay.

25 THE WITNESS: Yes, Judge.

1 ALJ WAKELEY: All right. Because it is related  
2 to the jurisdiction of this case I'm going to enter that  
3 as an exhibit. I'm going to keep things simple. It's  
4 already marked as Exhibit 5 by the claimant. I'm just  
5 going to call it Exhibit 5. And that is the  
6 redetermination with the mail date November 23<sup>rd</sup>, 2015.  
7 I understand there's a different original mail date on that  
8 as well.

9 BY ALJ WAKELEY:

10 Q And, Ms. Gill, this redetermination addressed the  
11 claimant's eligibility under Section 48 of the Act?

12 A Yes, Judge.

13 Q Now, this says notice of redetermination. Was there a  
14 determination issued in this case?

15 A It was not a redetermination issued in this case because  
16 there was a payment. The payment -- once the claimant  
17 received payment in MARVIN system the Agency considered  
18 that payment as the original determination so it was  
19 opened up as -- well, the first determination -- written  
20 determination he received was a redetermination, not a  
21 determination. So, that was the first determination that  
22 was issued. That was the first, excuse me, adjudication  
23 that was issued.

24 Q It has an original mail date of January 1<sup>st</sup>, 2010. So,  
25 this -- this same document in substance, anyway, was



1 mailed to the claimant on January 1<sup>st</sup>, 2010?

2 A Yes. And the original date would be January 1<sup>st</sup>. Mr. --

3 MR. LUCENTE: Lucente.

4 THE WITNESS: Lucente would have received it  
5 somewhere in approximation after the holiday around the 3<sup>rd</sup>  
6 or the 4<sup>th</sup>.

7 BY ALJ WAKELEY:

8 Q And --

9 A So, it really would have been issued out on the 2<sup>nd</sup>. It  
10 would have went out the next day.

11 Q The Agency put it in the mail on January 2<sup>nd</sup> --

12 A It would have went out -- yes.

13 Q Okay. And then the mail date in the upper right corner is:  
14 November 23<sup>rd</sup>, 2015?

15 A Yes, Judge.

16 Q Was it again mailed to the claimant on that date?

17 A That was a reprint and it was again mailed to the claimant  
18 on November the 23<sup>rd</sup> of 2015.

19 Q Why was it re-mailed on November 23<sup>rd</sup>, 2015?

20 A There must have been some kind of contact with the Agency  
21 and it was requested so the Agency re-mailed that  
22 information.

23 Q Okay. Was there any restitution attached to this  
24 adjudication?

25 A Yes. Judge, on the claimant's exhibit -- I believe this

1 is exhibit number -- I have it listed as Exhibit number 5  
2 I'm not sure how was it listed in your packet. But the  
3 Agency has it listed as Exhibit number 5 which was in the  
4 claimant's packet by Mrs. Bradshaw and it was a  
5 non-protestable summary of previous determination.

6 MS. BRADSHAW TUCKER: Can I say that was now  
7 Exhibit 7 in the -- there were different packets sent in.

8 THE WITNESS: Okay.

9 MS. BRADSHAW TUCKER: You have the earlier one

10 THE WITNESS: Okay.

11 MS. BRADSHAW TUCKER: There was no -- the  
12 exhibits were slightly renumbered.

13 THE WITNESS: Okay.

14 MS. BRADSHAW TUCKER: Exhibit 7 is the  
15 non-protestable summary of redetermined restitution and I  
16 would note the original mail date on that is a different  
17 date than the one indicated.

18 ALJ WAKELEY: Okay. So, I have a three page  
19 document as Ms. Bradshaw Tucker just said non-protestable  
20 summary of previously redetermined restitution with a mail  
21 date November 23<sup>rd</sup>, 2015 and original mail date December  
22 1<sup>st</sup>, 2010.

23 BY ALJ WAKELEY:

24 Q Ms. Gill, is that what you're referring to?

25 A Yes, Judge.



1 Q Okay. And this assessed restitution for benefits paid as  
2 well as penalties for fraud?

3 A Yes, Judge.

4 Q Okay.

5 A And I do want to indicate, I'm sorry, if I go back,  
6 looking at the exhibits, what you listed as Exhibit 5 with  
7 the original date of January 1<sup>st</sup> of 2010, if you go to the  
8 last page of that determination, the very, very last page,  
9 this claimant also has the following mail serve dates.  
10 And I do apologize because I did say that the original  
11 mail date was January 1<sup>st</sup> of 2010 but it appears that in  
12 the transforming of -- I'm sorry. The transformation of  
13 the redetermination from the old system to the new system  
14 this original date is not correct of January 1<sup>st</sup> of 2010.  
15 That would be considered what is called our zero out date.

16 So, the original date had to be in around about  
17 November 30<sup>th</sup> which would have correlated with his summary  
18 -- the non-protestable summary of previous redetermination  
19 restitution which was a December 1<sup>st</sup> date. This date here  
20 shows me as a claims examiner -- looking at this form as a  
21 claims examiner the -- there was two determinations issued  
22 out, one on November the 30<sup>th</sup>, one on December the 1<sup>st</sup>. As  
23 a claims examiner doing restitution and making previous  
24 determinations, not on this case, this shows me that there  
25 was an original determination that was issued on November

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1 the 30<sup>th</sup> which would have to correlate with the notice of  
2 redetermination regarding the 48 -- Section 48 which is  
3 the not unemployed issue. And December 1<sup>st</sup> the restitution  
4 was then issued out.

5 So, the original mail date that was on the  
6 notice of redetermination for both the Section 48 and the  
7 rest -- and the penalties which is Exhibit 4 that I have  
8 -- I think it might have been Exhibit 6 for you regarding  
9 Section 62(b) and 54.

10 ALJ WAKELEY: Hold on. Hold on.

11 MS. BRADSHAW TUCKER: The non-protestable --  
12 we're looking at the non-protestable summary of previously  
13 determined restitution?

14 THE WITNESS: No. I -- now I'm referring back  
15 to the --

16 MS. BRADSHAW TUCKER: The notice of  
17 redetermination?

18 THE WITNESS: The notice of redetermination for  
19 the 62(b).

20 MS. BRADSHAW TUCKER: I'm sorry. Okay.

21 THE WITNESS: So, that would be your 6 and my !  
22 -- 4.

23 MS. BRADSHAW TUCKER: Okay. There's two notices  
24 of redeterminations. One is -- one I have is 5 and one I  
25 have is, yeah, 4. You're right.



1 ALJ WAKELEY: Okay.

2 THE WITNESS: Those --

3 ALJ WAKELEY: Okay. Before we get in to the  
4 other redetermination let me just go back. For the  
5 restitution --

6 THE WITNESS: Yes.

7 ALJ WAKELEY: I'm going to enter that as  
8 Exhibit 7. And I'll just call that the restitution mail  
9 date November 23<sup>rd</sup>, 2015. That's three pages. Okay.

10 BY ALJ WAKELEY:

11 Q And, Ms. Gill, you were explaining something with another  
12 notice of redetermination?

13 A Yes, Judge, I was explaining the process of during that  
14 time how the determinations were issued --

15 Q Okay.

16 A -- and why the, excuse me, original mail date is -- is  
17 different. The original mail date would have been  
18 November the 30<sup>th</sup>. The original mail date. If we look at  
19 Exhibit 5 at the last page it has the issues date of  
20 November the 30<sup>th</sup> and December 1<sup>st</sup>. December 1<sup>st</sup> would have  
21 been the date in which the restitution summary would have  
22 been issued out which has the correct original mail date.

23 The notice of redetermination which involves  
24 the Section 48 and then 62(b), those original mail dates  
25 would have been November the 30<sup>th</sup> of 2010. The restitution

1 would have followed after the original determinations  
2 would have been issued out. If the -- I don't have a  
3 calendar available. I'm pretty sure in 2010 that must  
4 have been either a Friday -- I didn't bring my phone down  
5 to look at a calendar. I'm pretty sure that November 30<sup>th</sup>  
6 of 2010 probably was a -- a Friday which would have meant  
7 that the following Monday restitution would have went out  
8 as well.

9 So, looking at -- looking at those dates  
10 according to the entire reprint that was issued out on  
11 November the 23<sup>rd</sup> it tells me that's the reason why we have  
12 a few different original mail dates. However, the  
13 original mail date would have been November the 30<sup>th</sup> --

14 Q All right.

15 A -- which is a Friday.

16 Q For November 30<sup>th</sup> --

17 A 2010.

18 Q -- 2010. Was it the same document? Meaning, was it a  
19 notice of redetermination that went out?

20 A Yes, Judge.

21 Q Okay. And then you started to mention another notice of  
22 redetermination related to Section 62(b)?

23 A Yes.

24 Q Okay.

25 A That would be your Exhibit 4. It's my -- it's listed as

1 my Exhibit 4 --

2 MS. BRADSHAW TUCKER: Okay. Well --

3 THE WITNESS: -- by Ms. Bradshaw.

4 ALJ WAKELEY: I think it was Claimant's Exhibit

5 6.

6 MS. BRADSHAW TUCKER: That is 6.

7 THE WITNESS: Okay. Then --(undecipherable).

8 ALJ WAKELEY: (Multiple speakers)-- it doesn't  
9 matter too much.

10 THE WITNESS: Okay.

11 ALJ WAKELEY: In any event, it's also -- it  
12 also has a mail date of November 23<sup>rd</sup>, 2015 and it's a  
13 notice of redetermination with the involved Sections 54(b)  
14 and 62(b).

15 BY ALJ WAKELEY:

16 Q Ms. Gill, is that right?

17 A Yes, Judge.

18 Q That's three pages?

19 A Yes.

20 Q Okay. Do you know when this was originally mailed to the  
21 claimant?

22 A That -- both the redetermination of Section 48 and 62(b)  
23 was both mailed out on November the 30<sup>th</sup>. Those two, in  
24 the old system what we call companion issues, had to be  
25 issued out together at one time. Now in the new system



1 sometimes you will -- they're not what is called companion  
2 issues, they're called parent child issues which means  
3 they're individual issues their selves. In the old system  
4 they always were issued out together and then the  
5 restitution would follow.

6 ALJ WAKELEY: All right. Okay. I'm going to  
7 enter this notice of redetermination for the 54(b) and  
8 62(b) issues as Exhibit 6. That's three pages. We'll  
9 just call that the -- the fraud redetermination. That's,  
10 again, dated November 23<sup>rd</sup>, 2015.

11 BY ALJ WAKELEY:

12 Q Ms. Gill, did the claimant appeal any of these documents  
13 that we've talked about so far, the redeterminations or  
14 the restitution?

15 A During the period of time in 2010, '11 --

16 Q Did he ever appeal --

17 A Oh.

18 Q -- these decisions?

19 A There was an appeal that was issued and that was -- the  
20 first appeal that came to the Agency that I was aware of  
21 when preparing for the case -- just a moment. The first  
22 appeal that -- when preparing for the case, Judge, that I  
23 was aware of was November the 25<sup>th</sup> of 2015.

24 Q What was the claimant appealing?

25 A This was submitted by the claimant's attorney.

1 Q Which case did it apply to or did it apply to both?

2 MS. BRADSHAW TUCKER: Is that a request for  
3 documents?

4 THE WITNESS: This is -- this is a request for  
5 documents. So, this was received November 2015.

6 BY ALJ WAKELEY:

7 Q Well, is it an appeal?

8 A No, it was a request for documents.

9 Q Okay.

10 A And I don't have -- I never received or I don't have  
11 record of an appeal received on January 11<sup>th</sup> of 2016. I  
12 have no record in preparing the case.

13 Q Okay. Why do you mention January 11<sup>th</sup>, 2016, then?

14 A On denial of request for reconsideration or  
15 redetermination that was issued out on January the 19<sup>th</sup> of  
16 2016 -- oh. Just one second. I -- I apologize. Because  
17 that -- that request could have gone through Mr. -- the  
18 claimant's MiWAM account. So, as of right now I don't  
19 have anything that says he protested on January 11<sup>th</sup> of  
20 2016.

21 Q Okay.

22 A Unless he had that protest submitted through his MiWAM  
23 account.

24 Q Okay. But you don't have that appeal with you or you  
25 don't -- you're not aware of it?



1 A No, I -- I am not.

2 Q Okay. Did the Agency issue another decision in either of  
3 these cases, specifically a denial of redetermination on  
4 January 19<sup>th</sup>, 2016?

5 A Yes.

6 Q Was there a denial of redetermination issued for both the  
7 not unemployed decision and the fraud decision?

8 A Yes, Judge.

9 Q Okay. Were -- were those both issued on the same date?

10 A Yes, Judge.

11 Q Do you have copies of those denials of request for  
12 reconsideration or redetermination?

13 A Yes. That's listed in your packet from the Agency as C-1  
14 and C-2.

15 MS. BRADSHAW TUCKER: I'm sorry. Which  
16 document are we looking for right now?

17 THE WITNESS: It would be the denial of request  
18 for reconsideration or redetermination.

19 MS. BRADSHAW TUCKER: Okay. That -- that would  
20 be this one here?

21 THE WITNESS: Yes.

22 MS. BRADSHAW TUCKER: Okay. So -- and that was  
23 January 19<sup>th</sup>?

24 THE WITNESS: January the 19<sup>th</sup> of 2016.

25 MS. BRADSHAW TUCKER: Okay.



1 BY ALJ WAKELEY:

2 Q Ms. Gill, do you know -- so, I have what you've marked C-  
3 and C-2 and they're both a denial of request for  
4 reconsideration from --

5 A Yes.

6 Q -- January 19<sup>th</sup>, 2016. Do you know which goes to which  
7 case?

8 A It does not indicate -- well, according to -- it doesn't  
9 tell you which one goes to which case when you have a  
10 denial -- a request for a reconsideration. It doesn't  
11 have a claim number. Well, it had a claim number on there  
12 but the case number is not indicated, no. But there would  
13 be two that would be issued out for both the Section 48  
14 and also the Section 62(b). And, also, Judge, to go back  
15 to the January 11, 2016, the first -- that -- that request  
16 for appeal was received by the claimant's attorney on --  
17 that was the first appeal.

18 Q I'm sorry. Can you say that again?

19 A The appeal of January -- the appeal of January 11<sup>th</sup>, 2016  
20 was the first appeal request from the claimant's attorney  
21 and that was the -- the earlier documents that I had --  
22 packet of documents that I had. I was -- the exhibits  
23 number was incorrect.

24 MS. BRADSHAW TUCKER: Yeah. Not incorrect.  
25 They're just different.

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1 THE WITNESS: Oh. Just different -- labeled  
2 differently. That appeal request was received by the  
3 attorney on January the 11<sup>th</sup> --

4 BY ALJ WAKELEY:

5 Q You mean it was --

6 A -- of 2016.

7 Q -- it was sent in by the attorney?

8 A Yes, Judge.

9 Q Okay.

10 A I believe that that's in my packet as well.

11 ALJ WAKELEY: Okay. Regarding the denials of  
12 request for reconsideration or redetermination I'm going  
13 to enter that -- I'm just going to -- I'm just going to  
14 call it Exhibit C. And that'll be two pages. That'll be  
15 both of the denials of requests. Since I don't know which  
16 is which I'll just enter it as one exhibit. And those are  
17 dated January 19<sup>th</sup>, 2016. All right.

18 BY ALJ WAKELEY:

19 Q Ms. Gill, do you have a copy of the claimant's appeal from  
20 January 11<sup>th</sup>, 2016?

21 A Yes. Again, it was the first appeal that was submitted by  
22 the claimant's attorney, Ms. Bradshaw and Mr. Gwinn --  
23 Daniel Gwinn.

24 MS. BRADSHAW TUCKER: Daniel Gwinn, yeah.

25 THE WITNESS: Yes. I think that may be the

1 original attorney.

2 MS. BRADSHAW TUCKER: He's my partner.

3 THE WITNESS: Okay.

4 BY ALJ WAKELEY:

5 Q Do you have that in the packet that you sent in, Ms. Gill?

6 A Yes, Judge.

7 Q What -- what is it marked as?

8 A It is marked as --

9 Q Is it Exhibit B -- B-1?

10 A It was Exhibit B-1, yes.

11 Q Is that 40 pages?

12 A Yes.

13 Q 39 pages? Wait a minute.

14 A Are you talking about B-1 or D-1?

15 A B, Bravo, 1.

16 Q Okay. All right. I have 30 --

17 A (Undecipherable).

18 Q I have 38 pages. Is that right?

19 A Approximately. I -- I didn't really count. I'm going by  
20 the submission at the top.

21 MS. BRADSHAW TUCKER: Yeah.

22 ALJ WAKELEY: So am I. So, I --

23 THE WITNESS: Okay.

24 ALJ WAKELEY: So, I have 38 --

25 THE WITNESS: Okay.



1 ALJ WAKELEY: -- total pages. All right.

2 MS. BRADSHAW TUCKER: Okay. If -- if it would  
3 move things along we would concede that when this appeal  
4 was filed was in fact longer than a year after their  
5 redetermination was issued.

6 ALJ WAKELEY: Okay. I understand. I'm going  
7 to enter Exhibit B. That's the claimant's appeal from  
8 January 11<sup>th</sup>, 2016.

9 THE WITNESS: B, as in Bravo?

10 ALJ WAKELEY: Yeah. Yes. Bravo. That's 38  
11 pages.

12 MS. BRADSHAW TUCKER: What number is that?

13 ALJ WAKELEY: Letter B.

14 MS. BRADSHAW TUCKER: Okay.

15 ALJ WAKELEY: I'm going to use a combination.  
16 I'll just stick with however they were marked --

17 MS. BRADSHAW TUCKER: Okay.

18 ALJ WAKELEY: -- originally. Okay.

19 BY ALJ WAKELEY:

20 Q Ms. Gill, let me just ask you a couple other questions.  
21 You work for the Unemployment Insurance Agency for the  
22 State of Michigan?

23 A Yes.

24 Q How long have you worked there?

25 A It would 14 years on September 22<sup>nd</sup>. So, 13 and a half

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1 years.

2 Q Okay. What's your current job title?

3 A Unemployment Insurance Examiner.

4 Q All right. How long have you been an Insurance Examiner?

5 A 13 years.

6 Q Okay. Generally do you review peoples claims from  
7 unemployment benefits and help make decisions as to  
8 whether those claims are granted?

9 A Yes, Judge.

10 Q Okay. Did you review Mr. Lucente's file for the hearing  
11 today?

12 A Yes, Judge.

13 Q Are you the original examiner that made the decisions on  
14 his file?

15 A No, Judge.

16 Q Okay. All right. Ms. Gill, did you have anything else  
17 you wanted to add regarding the appeal issue, Section  
18 32(a)(2)?

19 A No, Judge.

20 ALJ WAKELEY: All right. Ms. Bradshaw Tucker,  
21 do you have any questions for Ms. Gill --

22 MS. BRADSHAW TUCKER: Yes, I do.

23 ALJ WAKELEY: -- on the late appeal?

24 MS. BRADSHAW TUCKER: Thank you.

25 CROSS-EXAMINATION



1 BY MS. BRADSHAW TUCKER:

2 Q Ms. Gill, the -- referring back, we had the notice of  
3 redetermination, the non-protestable summary, and the  
4 notice of -- the other notice of redetermination. What is  
5 the mailing address on those?

6 A The mailing address on those reprints -- because I cannot  
7 indicate at the time that this determination was issued  
8 out what the mailing address was I can only refer to the  
9 reprint. And the reprint is 17371 Kingsbrooke Circle,  
10 Apartment 102, Clinton Township, Michigan 48038.

11 Q Okay. So, that was most likely not the mailing address to  
12 which these were originally sent?

13 A Correct.

14 Q Okay. Is it -- would it be correct that these notices of  
15 redetermination and non-protestable summary would have  
16 been preceded by requests for information, request to the  
17 employer for information, and I think you said there would  
18 have been -- an original determination would have been  
19 issued? I'm a little confused on that. Let me -- I'm  
20 asking a compound question. Let me -- these documents  
21 would have been preceded by a request for information and  
22 other materials?

23 A Correct.

24 Q And am I correct that before you -- the Unemployment  
25 Agency would have garnished his wages he would have been

1 issued also a request for garnishment?

2 A Correct.

3 Q And --

4 A Well, not a request for garnishment. That would have gone  
5 to his employer. But that would have been preceded by  
6 monthly statements on how much he may have owed the Agency  
7 on repayment.

8 Q Okay. So, there would have been quite a large amount of  
9 communication from the Unemployment Agency to Mr. Lucente.

10 A Correct.

11 Q And do you have any idea to what address those  
12 communications -- and I assume that we're talking a fairly  
13 lengthy period of time they were sent?

14 A Correct. I do. In preparing for the case today the  
15 Agency did in its documents for this case file which is --  
16 I numbered number three as just as numeral three shows the  
17 address history that the Agency had for the claimant. His  
18 address history was P.O. Box 3083, Centerline, Michigan  
19 48015 and that would have been also the address which --  
20 his request for information which the Agency counts as  
21 fact finding would have been issued to that address as  
22 well which is A-1.

23 Q Okay. And I'm going to go back and question -- I was  
24 going to -- you mentioned that the -- there was no  
25 original determination because there was a payment made or



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1 surely there can be no payment made until there's been a  
2 determination made?

3 A At the time that the Agency became aware that Mr. Lucente  
4 was still employed he had previously received MARVIN  
5 payments.

6 Q Mm-hmm.

7 A And when those MARVIN payments are out -- are already  
8 issued out that is considered, let's say, the --

9 Q Okay. So, the -- the -- the original determination was  
10 finding that he was eligible and the redetermination then  
11 was finding that he was in fact not eligible?

12 A Correct.

13 Q Okay. Thank you very much. Okay. In your file is there  
14 any indication that from the time the Unemployment Agency  
15 first requested information through the whole process when  
16 it was sending bills that it received any response from  
17 Mr. Lucente? I'm talking 2010 through 2011 and in to  
18 2012.

19 A The Agency did not receive any information back from Mr.  
20 Lucente, no.

21 Q Okay. Did it ever occur or could it have been possible  
22 that the address the Agency sent all these documents to  
23 was not up to date?

24 A The claimant, Mr. Lucente, would have to notify the Agency  
25 whether or not he had a change of address.

1 Q Okay.

2 A So, the -- the Agency would only use the address that they  
3 had -- we had on record --

4 Q Okay.

5 A -- at the time.

6 Q Can I ask, what is the date that the first contact,  
7 request for information, was issued to Mr. Lucente?

8 A That was issued out on January -- excuse me. July the 7<sup>th</sup>  
9 of 2010.

10 Q Okay. And -- okay. So, that was the first date. What  
11 was the date that his benefits, whether properly paid or  
12 not, expired?

13 A The last payment -- I could not tell you exactly when his  
14 benefits expired --

15 Q (Multiple speakers)-- last payment.

16 A -- but the last payment that I have that Mr. -- during the  
17 period in time during which the Agency collecting --  
18 asking for was -- in the packet it's listed as CER 18.  
19 That certification was for the period of June 19<sup>th</sup> of 2010.

20 Q I'm sorry. June 19 what?

21 A 2010. That was the certification week ending date. And  
22 that certification was received or either he called in to  
23 receive that payment on June the 22<sup>nd</sup> of 2010.

24 Q Okay. So, Mr. Lucente's contact with the Unemployment  
25 Insurance Agency was through the phone?



1 A It appears, yes.

2 Q Okay. So, is it normal when people have completed their  
3 benefit year, they received their benefits for a period of  
4 time that they continue to stay in contact with the  
5 Unemployment Insurance Agency?

6 A In Mr. Lucente's case I --(undecipherable).

7 Q Just normally do people once they've -- they've used up  
8 their benefits, they're done, do they usually continue to  
9 stay in contact with the Unemployment Insurance Agency and  
10 inform them of any address changes if they are not  
11 conducting any business with them?

12 A Yes. In the instance where they would receive their 1099  
13 for the following year they will contact the Agency after  
14 benefits end because they will receive a 1099 for tax  
15 purposes. So, in that instance and -- at the beginning of  
16 the year, usually January or February, claimants if they  
17 have stopped previously receiving their benefits during  
18 that period of time we do receive numerous calls on  
19 receiving their 1099s for the proper addresses that they  
20 have on record.

21 Q Okay. So, apart from problems with taxes people would not  
22 normally get in touch with the Agency?

23 A No, once they exhaust their benefits they go and seek work  
24 and they will not contact the Agency again until it is  
25 time to receive their 1099s for the tax season.



1 Q So, as far as -- what you have basically is that the  
2 Agency has taken action and they made a determination, and  
3 this was back in 2010, there was no communication or -- of  
4 any kind from Mr. Lucente until 2015 when there was a  
5 request for a file, is that correct?

6 A I'm not able to answer that question because Mr. Lucente,  
7 again, could have contacted the Agency to receive his  
8 1099. However, there was no written request for  
9 information to be submitted to him until -- or submitted  
10 to anyone until 2014 --

11 Q Okay.

12 A -- and that was the record of -- or, request of his file  
13 information that was received in 2014.

14 Q Okay. And he did not respond to any of the communications  
15 that you sent him?

16 A He did not respond back to any of the requests for  
17 information, no.

18 MS. BRADSHAW TUCKER: Okay. Your Honor, on  
19 this issue I don't have any more questions for the  
20 representative. If possible could I ask some questions to  
21 Mr. Lucente?

22 ALJ WAKELEY: In just a second. Ms. Gill, is  
23 there anything else that you wanted to explain based on  
24 Ms. Bradshaw Tucker's questions?

25 THE WITNESS: No, Judge.

1 ALJ WAKELEY: Okay. Then go ahead, Ms.  
2 Bradshaw Tucker, with --

3 MS. BRADSHAW TUCKER: Okay.

4 ALJ WAKELEY: -- claimant's testimony.

5 FRANK LUCENTE

6 (Called as a witness, previously sworn, testified as follows:)

7 DIRECT EXAMINATION

8 BY MS. BRADSHAW TUCKER:

9 Q Mr. Lucente, you lost your job in 2008, is that correct?

10 A Yes.

11 Q Okay. From 2008 to 2010 did you have a fixed address?

12 A Not really, no.

13 Q Okay. Did you have a fixed address in 2011 and 2012?

14 A Not really, no.

15 Q Okay. What address did you use?

16 A I used the P.O. Box --

17 Q Okay.

18 A -- on Centerline because I was not living anywhere at the  
19 time.

20 Q Okay. And do you have any idea how long you used that  
21 P.O. Box?

22 A I believe it was at least -- at least one year, could have  
23 been a little longer, but I don't have the exact dates,  
24 no.

25 Q Okay. Did you ever receive any of these documents that

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1 Ms. Gill has referred to today?

2 A No, I did not.

3 Q Okay. What was -- if you can tell us, what was the very  
4 first time that you saw the notice of determination and  
5 the -- I have the non-protestable summary of redetermined  
6 benefits.

7 A Today.

8 Q Yeah.

9 A I don't believe I've ever seen that document. When I  
10 called the Unemployment Agency back in 2015 --

11 Q Okay.

12 A -- is when I first --

13 Q We'll backtrack a little. How did you eventually learn  
14 that you were being -- the Unemployment Agency had taken  
15 some action against you?

16 A At -- when I got my pay stub at work it was 25 percent  
17 less than I usually make so I called my employer and they  
18 sent me to payroll and they told me that there was a  
19 garnishment from the Unemployment Agency.

20 Q Okay. Did you do anything about the garnishment at that  
21 time?

22 A I did not.

23 Q Did you contact the Unemployment Agency at that time?

24 A I did not.

25 Q Okay. What prompted you to contact the Unemployment



1 Agency?

2 A Well, after this has been going on for quite some time --  
3 what I -- what I didn't know was that there would be  
4 penalties and interest to the money that was -- that I had  
5 received from the Unemployment Agency. What I was hoping  
6 was that they would just take back what was given to me  
7 and then they -- the garnishments would stop. And why I  
8 ended up calling them was because it was never stopping  
9 and then when they told me the total amount is when I knew  
10 that this -- I was in big trouble.

11 Q Okay. And around what time frame would that have been?

12 A I believe it was around 2015 of last year, late Fall.

13 Q Okay. And that was when you called the --

14 A Unemployment Agency directly.

15 Q Okay. And did you ask them if you could do anything about  
16 the situation?

17 A I did and they said they couldn't -- they could not give  
18 me any legal advice over the phone, they could not give me  
19 any -- any information over the phone regarding my case.  
20 What they did ask me for was for my -- my current address  
21 which I gave them and then after I got home from being out  
22 of town on work is when I first received the -- I don't  
23 know. Like, a -- a payment of what I owed and how much  
24 was being taken.

25 Q Okay. When you said request for payment entry this is --

1 MS. BRADSHAW TUCKER: And, forgive me, Ms.

2 Gill, this is just as more an exemplar.

3 BY MS. BRADSHAW TUCKER:

4 Q What you saw, would that have been -- look something like  
5 this?

6 A Exactly.

7 Q Okay. This is a notice of payment due I'm just showing  
8 you. So, the very first communication you received in  
9 writing from the Unemployment Agency was in the Fall of  
10 2015 and it was a notice of payment due, is that correct?

11 A That is correct.

12 Q Okay. And when you contacted the Unemployment Insurance  
13 Agency they did not apprise you whether you had any right  
14 to appeal or any action?

15 A They would not give me any legal information over the  
16 phone. All -- like I said, all they asked me for was my  
17 current address which I gave them.

18 Q And this was the only document you had received?

19 A That -- when I was -- when I got home that was in my -- my  
20 mailbox.

21 Q Okay. And how is it that you came to appeal?

22 A After -- like I said, once they started garnishing my  
23 wages I just let it go on because I wanted to do the right  
24 thing, pay the money back, but after I did the math I --  
25 and after I heard the amounts from the Agency member I



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1 knew that there was no way I'd be ever -- ever pay -- pay  
2 all the money back. So, that's why I -- I was --

3 Q Okay. If I could ask, did you -- what steps did you take  
4 to appeal? Did you --

5 A I --

6 Q -- contact someone?

7 A I called Daniel Gwinn.

8 Q Okay. And that would have been around --

9 A 2015. Last year.

10 Q -- I take it in the late part of the year?

11 A I believe so, yes.

12 Q Okay. And then Mr. Gwinn had then handled your appeal for  
13 you?

14 A That's correct.

15 Q Okay. So, to this day have you ever formally received the  
16 findings of the Unemployment Insurance Agency?

17 A I received a big stack of --

18 Q Okay. And when was that?

19 A That was last week.

20 MS. BRADSHAW TUCKER: Last week. Okay. Thank  
21 you, your Honor.

22 ALJ WAKELEY: Okay. Ms. Gill, do you have any  
23 questions for the claimant?

24 MS. GILL: Yes, Judge.

25 ALJ WAKELEY: Go ahead.



## CROSS-EXAMINATION

1  
2 BY MS. GILL:

3 Q Mr. Lucente, you stated that you lived at -- you received  
4 your mail at the P.O. Box that the Agency had which was  
5 P.O. Box 3083, Centerline, Michigan. You received that  
6 for approximately one year?

7 A I believe so, yes.

8 Q Did you contact the Agency within that period of time and  
9 inform the Agency that you had different residence?

10 A I did not. I was homeless at the time.

11 Q Okay. Were you paying for that P.O. Box?

12 A I was.

13 Q Okay. So, if you were paying for that P.O. Box were you  
14 going to that P.O. Box, receiving your -- any kind of mail  
15 from that P.O. Box?

16 A Yes, Ma'am.

17 Q Okay. Did you receive any correspondence from the Agency  
18 at that P.O. Box?

19 A I received the unemployment check and whatever paperwork  
20 they sent with -- during that period I had the P.O. Box.

21 Q Okay. So, you also stated in your testimony that you  
22 found out that you were being garnished through your  
23 employer. Is that Ventures Human Resources?

24 A I didn't work for Venture. Venture was doing the payroll  
25 for my company.

1 Q Okay. And when did you receive that garnishment? When  
2 did you find out that there was a garnishment?

3 A I believe it was the Summer of 2014.

4 Q Okay. And did you contact the Agency at that time?

5 A I did not.

6 Q Okay. Why didn't you contact the Agency at that time?

7 A Because I wanted to pay the money back and do the right  
8 thing. I -- like I said, my company never -- I never got  
9 a letter of garnishment or anything to see a total amount  
10 on that and what I wanted to do was just -- I was --  
11 actually relieved, to be honest with you, when you were --  
12 started garnishing my wages because I just wanted to pay  
13 the money back to the state and once I called them in 2015  
14 and they told me the grand total is when I had to do  
15 something about it because there's \$30,000.00.

16 Q How did you know what you owed?

17 A When I called the Unemployment Agency in --

18 Q You said you wanted to pay -- I'm sorry. I didn't mean to  
19 cut you off. Go ahead.

20 MS. BRADSHAW TUCKER: I think that's going to  
21 go to the other issue.

22 THE WITNESS: When I called from work in  
23 California and I talked to the lady on the phone she told  
24 me the grand total and that's when -- that's -- she told  
25 me the grand total and she asked me for my current address



1 and I then I asked of course is there anything I can do,  
2 she said she could not give me any advice over the phone,  
3 legal or what not, and the -- that's -- basically when the  
4 call ended was when I gave her my current address.

5 MS. GILL: Okay.

6 BY MS. GILL:

7 Q So, when you -- this is going back a little bit. I'm  
8 sorry. And I know this has been a -- it's been a while,  
9 the proceedings has been a while. So, excuse me. So,  
10 when you found out in the Summer of 2014, you stated that  
11 you found out and you were relieved that you could pay the  
12 money back, how did you know the amount of money that you  
13 needed to pay back to the Agency?

14 A I didn't. I just assumed that they would stop garnishing  
15 my wages when it was paid in full.

16 Q Did you --

17 A I did --

18 Q -- attempt to --

19 A I kind of did the math. I figured it would probably be  
20 around between 4 and 5 thousand dollars. That was my -- I  
21 had -- that was my calculator. So, I figured I'll just do  
22 this and pay it back and hopefully move on with my life.  
23 But obviously we're here today so that didn't really work  
24 out too well.

25 MS. GILL: I don't have any question -- further



1 questions, Judge.

2 ALJ WAKELEY: Okay. Ms. Bradshaw Tucker, any  
3 follow up questions?

4 MS. BRADSHAW TUCKER: Okay. Just redirect  
5 briefly.

6 REDIRECT EXAMINATION

7 BY MS. BRADSHAW TUCKER:

8 Q At the time you canceled your P.O. Box did you believe you  
9 were -- were you done receiving benefits from the  
10 insurance agency?

11 A I -- yes.

12 Q Okay. After you were done receiving, after they paid you  
13 whatever they were going to pay you, as far as you were  
14 concerned did you have any reason to get in contact with  
15 them before you learned you were being -- (undecipherable).

16 A No.

17 MS. BRADSHAW TUCKER: No.

18 ALJ WAKELEY: Okay. Mr. Bradshaw Tucker, you  
19 said you are not contesting the Agency's decision that Mr.  
20 Lucente --

21 MS. BRADSHAW TUCKER: We are not contesting  
22 that he was ineligible.

23 ALJ WAKELEY: Right.

24 MS. BRADSHAW TUCKER: We are contesting both --  
25 very strongly contesting the imposition of a penalty

1 without any kind of hearing or adjudication and --

2 ALJ WAKELEY: Okay. We'll move to the fraud  
3 issue, then. Ms. Gill, I'm going to start with you since  
4 the Agency has to prove fraud.

5 CHELSEA GILL

6 (Recalled as a witness, previously sworn, testified as  
7 follows:)

8 EXAMINATION

9 BY ALJ WAKELEY:

10 Q Generally I'm just going to ask you, does the Agency have  
11 evidence that you'd like to present in support of its  
12 fraud adjudication?

13 A Yes, Judge. The Agency would like to present -- according  
14 to the packet that I sent you I did include several  
15 certifications which is MARVIN certifications which means  
16 that Mr. Lucente --

17 MS. BRADSHAW TUCKER: Lucente. Your Honor, Mr  
18 Lucente would concede, as I think he has already done,  
19 that he did in fact certify for MARVIN that he was not  
20 working at a time when he was. However, we are contesting  
21 intentional fraud. We are contesting the penalty  
22 believing that the Unemployment Insurance Agency when it  
23 makes the finding makes two findings, one that there was  
24 fraud, another that someone is -- should be subject to a  
25 penalty, and on top of that that penalty should be



1 quadruple penalty because the statute is permissive and  
2 does not require the imposition of any penalty at all when  
3 benefits are received improperly.

4 The imposition of a penalty is, as I said,  
5 permissive, it is something that should be based on the  
6 conduct of the individual. So, the state of mind and the  
7 intentionality and, I would say, the ethical dilemma of  
8 the claimant is relevant and something that should be  
9 heard. But --(undecipherable)--

10 ALJ WAKELEY: That's fine. I --

11 MS. BRADSHAW TUCKER: -- take the time to go  
12 through what we in fact would concede.

13 ALJ WAKELEY: Are you conceding that the  
14 claimant intentionally --

15 MS. BRADSHAW TUCKER: That --

16 ALJ WAKELEY: -- committed fraud?

17 MS. BRADSHAW TUCKER: No. We are conceding  
18 that he did state to MARVIN that he had benefits -- that  
19 he was not employed when he was employed.

20 ALJ WAKELEY: Okay. And --

21 MS. BRADSHAW TUCKER: So, she doesn't need to  
22 go through every single one of them. That's all. We're  
23 just trying to move it along.

24 ALJ WAKELEY: Well, it's the Agency's burden to  
25 try to prove that there was intent on --



1 MS. BRADSHAW TUCKER: Okay.

2 ALJ WAKELEY: -- on Mr. Lucente's part. I'm  
3 going to let them do that. And part of --

4 MS. BRADSHAW TUCKER: Okay.

5 ALJ WAKELEY: -- Ms. Gill's case is apparently  
6 to introduce evidence of his certification --

7 MS. BRADSHAW TUCKER: Okay.

8 ALJ WAKELEY: -- which is relevant to the  
9 issue. So --

10 MS. BRADSHAW TUCKER: I'm not saying it's  
11 irrelevant. Okay.

12 ALJ WAKELEY: So, we're going to proceed.

13 THE WITNESS: So, the certifications that the  
14 Agency sent in was certifications 1 through 18. That was  
15 in the packet. And during those certifications there was  
16 no indication by that claimant, Mr. Lucente, that said  
17 that he returned back to work and or had any earnings  
18 during the weeks following February the 20<sup>th</sup> of 2010 up to  
19 -- the last week of certification that I did print out for  
20 this hearing was June 19<sup>th</sup> of 2010.

21 So, during that period of time the Agency would  
22 like to issue those certifications as exhibits that Mr.  
23 Lucente did not report his earnings and or that he was  
24 employed full-time. The Agency also --

25 ALJ WAKELEY: Hold on. Okay. Hold on. Hold

1 on. All right.

2 BY ALJ WAKELEY:

3 Q So, you have 18 pages of what you're calling  
4 certifications?

5 A MARVIN certifications, yes, Judge.

6 Q Okay. Can you explain what these are?

7 A The MARVIN certifications are -- in order to receive  
8 unemployment benefits you must either call in to MARVIN  
9 and or certify via the internet online -- certify via  
10 online that you are able and available and seeking work  
11 and you are unemployed at the time. So, looking at the  
12 certifications in which the Agency submitted to you the  
13 Agency has indicated that during that period of time Mr.  
14 Lucente at the very last question "Gross earnings  
15 received" never reported that he had any earnings.

16 And the MARVIN question begins with asking --  
17 the -- before certifying for any of these weeks "Are you  
18 claiming both weeks" and "Have you returned back to work  
19 full-time"? In order to receive unemployment benefits or  
20 receive payment Mr. Lucente, the claimant, had to report  
21 that he was unemployed during that period of time or did  
22 not report to MARVIN that he was employed.

23 Q All right. How are these records themselves created?  
24 Where does this -- where does this come from, this  
25 paperwork?



1 A This paperwork comes from -- again, I'm going to --  
2 because this is in the old system and these are MARVIN  
3 certifications if you have the new system it will read a  
4 little bit different than this. This is because these are  
5 certifications that were previously made. So, these are  
6 all kept in our -- it was all transferred over in to our  
7 new system that was -- that went live on October 1<sup>st</sup> of  
8 2013. So, MARVIN certifications and all documentations or  
9 adjudications that were prepared or issued in the old  
10 system was then transferred over to what is called our new  
11 MiDAS system.

12 Q All right. Does the Unemployment Agency keep records of  
13 each claimant's certification responses?

14 A Yes, we do.

15 Q All right. Are these pages, then, a record of Mr.  
16 Lucente's certification responses?

17 A Yes, Judge.

18 Q Are these maintained in some sort of record keeping system  
19 that the Agency relies on in running its operations?

20 A It is, yes, Judge.

21 Q All right. Are you someone that is familiar with this  
22 system?

23 A Yes, Judge.

24 Q And you had access to Mr. Lucente's certification records?

25 A Yes, Judge.



1 Q All right. Let me ask you specifically, I see where it  
2 says "Gross earnings received." I don't see anywhere  
3 where it mentions whether Mr. Lucente is employed.

4 A Again, when you begin your MARVIN certification -- and  
5 this is going by my experience as a UIAE, or unemployment  
6 insurance examiner, and helping claimants complete MARVIN  
7 certifications being a third person on the line to help  
8 new claimants go through the MARVIN system, when you ask  
9 -- when you call in to MARVIN he asks you "Are you  
10 claiming both weeks of unemployment," being last week and  
11 this week, then he asks "Are you working full-time?" You  
12 either answer "Yes" or "No."

13 These questions are not elaborated because,  
14 again, these were done in 2010 and they were converted  
15 over. And you can see by the -- underneath "Converted  
16 certifications" on the screen print it says "Converted  
17 certification" which means that it went from the old  
18 system to the new system and they're not going to show the  
19 -- every question that MARVIN asked you as the new system  
20 that was converted over will do.

21 Q Okay.

22 A However -- I'm sorry. I do not have the Agency 1901  
23 booklet which is an unemployment insurance booklet in the  
24 mail that each claimant receives.

25 Q All right. Do you know whether Mr. Lucente certified by

1 phone or online for each of these certifications?

2 A These certifications appear that they may have been on --  
3 via the telephone because according to the information  
4 that I provided Mr. Lucente never had a web account. So,  
5 based off of that he would not have did his certifications  
6 online.

7 Q All right. Did you want to enter these 18 pages of  
8 certifications as an exhibit?

9 A Yes, Judge.

10 ALJ WAKELEY: All right. Ms. Bradshaw Tucker,  
11 do you have any objection to the certifications?

12 MS. BRADSHAW TUCKER: No, I don't.

13 ALJ WAKELEY: Okay. I'm going to enter those  
14 as Exhibit 8. That's -- excuse me. That's 18 pages.  
15 Those are the certifications.

16 BY ALJ WAKELEY:

17 Q Ms. Gill, did you have any evidence supporting the fraud  
18 decision?

19 A The Agency also would like to go to its adjudication which  
20 you marked as Exhibit 5. And that also included the  
21 redetermination.

22 Q Okay. That's already been entered.

23 A Okay. So, the Agency, again, position is the act of  
24 intentional misrepresentation is because Mr. Lucente  
25 withheld information relevant to receiving unemployment



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1 benefits. If Mr. Lucente is saying that he was employed  
2 during that time he did not report that to the  
3 Unemployment Insurance Agency and or MARVIN in order to  
4 receive benefits. So, he withheld vital information in  
5 order to receive benefits and that's why the Agency is  
6 pursuing intentional misrepresentation.

7 Q Okay. Do you have anything else that you wanted to  
8 present?

9 A No, Judge.

10 ALJ WAKELEY: All right. Ms. Bradshaw Tucker,  
11 do you have any questions for Ms. Gill?

12 MS. BRADSHAW TUCKER: Okay. Just -- well, as  
13 to that, no. Thank you.

14 ALJ WAKELEY: Okay.

15 MS. BRADSHAW TUCKER: May I ask --

16 ALJ WAKELEY: Yes. You have evidence for the  
17 claimant?

18 MS. BRADSHAW TUCKER: Okay.

19 FRANK LUCENTE

20 (Recalled as a witness, previously sworn, testified as  
21 follows:)

22 REDIRECT EXAMINATION

23 BY MS. BRADSHAW TUCKER:

24 Q Mr. Lucente, when -- back in 2008 you were laid off,  
25 correct?



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1 A Correct.

2 Q Okay. What was the name of your employer?

3 A Helm, Incorporated. (ph)

4 Q Okay. And you applied for unemployment benefits after  
5 being laid off?

6 A Yes.

7 Q Okay. And did you receive benefits?

8 A Yes.

9 Q Okay. Were the benefits enough for you to live on?

10 A No.

11 Q Okay. Did you look for work?

12 A Yes.

13 Q Okay. Did you apply for extended benefits?

14 A I believe I did.

15 Q Okay. Were you able to find a job?

16 A After a while I ended up finding a job, yes.

17 Q Okay. In 2008 did you find a job?

18 A No, I did not.

19 Q In 2009 did you find a job?

20 A I did not.

21 Q Okay. So, you were unemployed for almost two years?

22 A Yes.

23 Q Okay. Where were you living at that time?

24 A I was bouncing around. I was living at MATS Salvation  
25 Army homeless shelter on 10 Mile and Mound in Warren,

1 Michigan.

2 Q I'm sorry. Where were you living?

3 A It was calls MATS, M-A-T-S, Salvation Army on Mound Road  
4 in Warren, Michigan just South of 10 Mile.

5 Q Okay. So, for a period you were --

6 A Homeless.

7 Q -- you were basically homeless. Okay. While you were  
8 looking for work you established a P.O. Box?

9 A I did.

10 Q Okay. And -- I'm sorry. We've covered some of this.

11 A I established a P.O. Box because when you are looking for  
12 work you need to put down an address. You have to put an  
13 address down or you would be considered a vagrant. So, I  
14 had to have the P.O. Box so I could put down a legitimate  
15 address while I was applying for jobs --(undecipherable).

16 Q Okay. In 2008 when you first received unemployment  
17 benefits did you receive a green book?

18 A I don't remember a green book to be honest with you. I --

19 Q Okay.

20 A I may have. I -- I don't know.

21 Q Okay. You were moving around a lot?

22 A I was, yeah.

23 Q Do you know if you misplaced the green book?

24 A I -- I -- I -- I don't recall, no.

25 Q Okay. How was your health while this go -- was going on?

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- 1 A Physically I guess I was -- I guess all right. I don't  
2 know. My -- mentally it was not very good  
3 --(undecipherable)-- very depressed. I was put on anti --  
4 anti depressants which I still am on today. It's affected  
5 my memory, it's affected a lot of aspects of my life.
- 6 Q Okay. For how long did this depression go on?
- 7 A It's been going on til this day. I'm still -- I'm not  
8 cured. I am on -- I am on medication. I take between --
- 9 Q Okay.
- 10 A It will go on --
- 11 Q Okay.
- 12 A -- until either -- I -- I really don't know --
- 13 Q Okay.
- 14 A -- if there's a cure to be honest with you.
- 15 Q Did you eventually find a job?
- 16 A I did.
- 17 Q Okay. And who was that with?
- 18 A Dart Properties.
- 19 Q Okay. And when you received the job were you paid right  
20 away?
- 21 A I was not, no.
- 22 Q Okay. Did you continue to certify?
- 23 A I did.
- 24 Q Were you in fact looking for a job while you were waiting  
25 for payment?



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- 1 A I kind of was.
- 2 Q Okay. Now, when you -- did you eventually get paid?
- 3 A I got paid, yes.
- 4 Q Okay.
- 5 A After my -- after my first week -- it was -- actually
- 6 three weeks after I was hired I got my first --
- 7 Q Okay.
- 8 A -- my first paycheck.
- 9 Q Okay. And did you continue to certify for unemployment
- 10 benefits?
- 11 A Yes.
- 12 Q Can I ask what was going through your mind when you did
- 13 that?
- 14 A Well, I wasn't sure if I was -- I really don't know to be
- 15 honest with you what was going through my mind. I was
- 16 sick of where I was at. I just wanted to have a place for
- 17 my boys to come and hang out. I was not eating well. It
- 18 was a very, very bad situation for me at the time.
- 19 Q Okay.
- 20 A I wasn't sure if I was going to start at Dart even though
- 21 they had hired me. The pay wasn't very well but it was
- 22 obviously better than nothing so I took the job. But, no,
- 23 I -- I was still -- actually still looking for something
- 24 better so I could get on my feet.
- 25 Q And the entire time but -- although it paid well you did

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1 continue to certify?

2 A Correct.

3 Q And you said your state of mind at this time was very  
4 confused?

5 A I would say, yes, that'd be an accurate statement.

6 Q Okay. Did you eventually realize that you should not be  
7 certifying?

8 A Yes, I did.

9 Q Okay. Did you remedy the matter --

10 A I --

11 Q -- at that time?

12 A I thought when the first garnishment was taken out of my  
13 check that was going to start the -- the process of  
14 remedying the matter, yeah.

15 Q Okay. So, you -- you did not contest the garnishment?

16 A I did not. I -- no, I didn't even call until last year  
17 about it.

18 Q At the time you were certifying did you have an intent to  
19 deliberately mislead the Unemployment Insurance --

20 A I -- I did not. I didn't know what was going on, to be  
21 honest with you, at that time. That was --

22 Q Okay.

23 A The prescription medication they put me on they had to try  
24 a few different -- few different things to get the right  
25 cocktail. That's what they call it, a cocktail. I was

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1 not -- I -- I was not myself to say the least.

2 Q Okay.

3 A I am currently doing a lot better but I'm not cured by any  
4 means. I do have -- battle depression but it's --

5 Q Okay.

6 A It is what it is.

7 Q You acknowledge you were not eligible for the benefits at  
8 the time?

9 A I do.

10 Q Okay. And you are very willing, am I understanding you,  
11 to -- to pay those back?

12 A Absolutely.

13 Q Okay. Are you currently working?

14 A I am, yes.

15 Q Have you been since you worked for Dart? Have you had any  
16 other period of unemployment?

17 A No. That I've claimed with the Unemployment Agency or --

18 Q Or just that you lost your job.

19 A I lost my job but, no, I did not claim any benefits  
20 through unemployment and I had a job within a week of  
21 being let go from my other job. So, I've been employed  
22 for the past -- I was employed for, like, four and a half  
23 years. I was laid off in late January of this past year.  
24 I did not claim any benefits for obvious reasons. And I  
25 just returned to work about a month ago.



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1 Q Okay. So, you are financially struggling at the moment?

2 A Yes, until I -- until I get a few paychecks under my belt  
3 I am absolutely struggling right now. I have -- I have a  
4 lot of bills to pay. I mean, I'm currently -- I'm working  
5 with the people that I owe money to, like, even the  
6 utility companies that I have payment plans with, but  
7 until I'm back to work, you know, get a -- two -- actually  
8 three months in I should be -- the way I calculated it out  
9 I should be pretty close, yeah. So -- but, yes, I am  
10 struggling at the moment.

11 Q Okay. And --(undecipherable)-- but in fact we have worked  
12 out a payment schedule as well --

13 A Yes.

14 Q -- correct?

15 A Yes, we did.

16 Q Okay. And, again, you never --(undecipherable)-- have you  
17 -- before you became unemployed in 2008 had you been in  
18 any trouble?

19 A No. No.

20 Q Okay. While you were unemployed or -- or part of the time  
21 you were unemployed and -- and continuing now have you  
22 been responsible for child support?

23 A Yes.

24 Q And have you paid child support?

25 A Absolutely.

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1 Q Okay. And how much is your child support every month?

2 A Every week it's approximately \$187.00 --

3 Q Okay.

4 A -- for two boys.

5 Q All right. And how much are you paying to the  
6 Unemployment Insurance Agency?

7 A I believe it's 25 percent of each paycheck --

8 Q Okay.

9 A -- each week.

10 Q And the paychecks are by every other week?

11 A I believe it's weekly the garnishment comes out.

12 Q Okay. 25 percent of what you make is going to the -- pay  
13 back the unemployment?

14 A That is correct.

15 Q What is the total amount that you've been informed that  
16 you have to pay back?

17 A I saw a few of those forms since I've been back. One of  
18 them said \$29,000.00. The lady on the phone said it was a  
19 little over 30. I -- I don't even know if the -- I know  
20 it's over \$25,000.00 at the present time I do believe. It  
21 doesn't go -- even though I keep paying it it really  
22 doesn't go down because of the interest and penalties.

23 MS. BRADSHAW TUCKER: Okay. And, I'm sorry,  
24 your Honor, could I ask Ms. Gill a couple questions on  
25 just the amount?

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1 ALJ WAKELEY: Well, I think --

2 MS. BRADSHAW TUCKER: I'm sorry. I realize --

3 ALJ WAKELEY: You can. Did you have any other  
4 questions for Mr. Lucente?

5 MS. BRADSHAW TUCKER: Not at this time, no.

6 ALJ WAKELEY: Okay. Ms. Gill, did you have any  
7 questions for Mr. Lucente?

8 MS. GILL: Yes, Judge.

9 ALJ WAKELEY: Okay. Go ahead.

10 RECROSS-EXAMINATION

11 BY MS. GILL:

12 Q Mr. Lucente, you stated in testimony currently and  
13 previously --

14 ALJ WAKELEY: Actually --

15 BY MS. GILL:

16 Q -- that you were --

17 ALJ WAKELEY: I'm sorry to do this. I'm going  
18 to ask you to just hold on for one second. Ms. Gill, I do  
19 have a hearing scheduled for 10:00 o'clock. I am going to  
20 adjourn that. We're going to continue with this hearing  
21 and we're going to finish this this morning but I do need  
22 to just make a notification that I need to reschedule my  
23 10:00 o'clock hearing as it's now 10:00 o'clock.

24 MS. GILL: Okay.

25 ALJ WAKELEY: So, I'm going to go off the



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1 record for just a moment, run down the hall, do that, and  
2 I'll be right back --

3 MS. GILL: Okay.

4 ALJ WAKELEY: -- and we'll proceed at that  
5 time.

6 MS. BRADSHAW TUCKER: Thank you.

7 ALJ WAKELEY: The time is 10:00 o'clock a.m.  
8 We're going off the record. All right. The time is now  
9 10:02. Thank you for your patience. We'll go ahead and  
10 get started again. Same parties are all present. Ms.  
11 Gill, go ahead if you have questions.

12 MS. GILL: Thank you, Judge.

13 BY MS. GILL:

14 Q Mr. Lucente, you previously stated in your testimony that  
15 you were certifying with MARVIN, however, you were  
16 employed. Were -- when you -- I'm sorry. Let me go back.  
17 When you started with Dart were you hired in as a  
18 full-time employee?

19 A Yes, Ma'am.

20 Q Okay. So, when you certified with MARVIN during the  
21 period of time covering February the 20<sup>th</sup> of 2010 to June  
22 of 2010 were you employed full-time?

23 A Yes, Ma'am.

24 Q Did you report that when you certified with MARVIN?

25 A I did not.

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1 Q Okay. Why didn't you report you were working full-time  
2 when you certified with MARVIN?

3 A I wasn't sure if I was going to be working full-time that  
4 much -- that long -- for an extended period of time. I  
5 was mentally not in a very good place like I said. I  
6 wasn't sure if I would be able to keep the job. I was  
7 still looking for a job. I wasn't sure if I was coming or  
8 going. I'm not -- I'm not discounting that I was  
9 certifying with MARVIN --(undecipherable).

10 Q How long did you work for Dart?

11 A I believe it was a little over a year.

12 Q And how much did you make an hour?

13 A I believe it was -- I started out at I want to say 13.75.

14 Q Okay. And did you work for Ventures after Dart?

15 A I did not. Venture is a payroll company.

16 Q Okay.

17 A Okay. I worked for Baton Technical (ph) after I was  
18 released from my contract with Dart --(undecipherable)--  
19 Properties.

20 Q And you said -- when would you say your last day of Dart  
21 -- with -- with Dart was?

22 A I believe it was sometime in June of 2012.

23 Q Okay. So, you worked there for approximately a little bit  
24 over a year?

25 A That is correct.

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1 Q Okay. And then you proceeded to another company?

2 A Yes, Ma'am.

3 Q How much did you make there?

4 A I started at 20.25 per hour.

5 Q And are you -- when did you begin employed with Ham -- is  
6 it Hambon? (ph)

7 A Helm.

8 Q Helmbon?

9 A Hambon is not -- Hambon is also another payroll company  
10 that Baton Technical used to do their payroll.

11 Q So, Baton Technical, you worked there for --

12 A It's been -- I was there for about four, four and a half  
13 years until I was laid off this past late January of 2016.

14 MS. GILL: Okay. I have no other questions,  
15 Judge.

16 ALJ WAKELEY: Okay. Ms. Bradshaw Tucker, any  
17 follow up questions for Mr. Lucente?

18 REDIRECT EXAMINATION

19 BY MS. BRADSHAW TUCKER:

20 Q So, Mr. Lucente, just to clarify, Baton Technical has used  
21 different --

22 A Payroll companies, that's correct.

23 Q -- payroll companies and, so, the UIA had been in touch  
24 with different payroll companies --

25 A Yes.



1 Q -- to garnish your wages? Okay.

2 MS. BRADSHAW TUCKER: And, your Honor, you said  
3 I might ask just a quick question to Ms. Gill?

4 ALJ WAKELEY: Right. Mr. Lucente, when did you  
5 begin working for Dart?

6 THE WITNESS: I believe it was sometime in  
7 2011. I'm not really quite sure. Like I said, I -- my  
8 memory is not the best. I -- I believe I started -- you  
9 know what, I think it was actually 2010 when I started  
10 with Dart Properties. I think it was either very early --  
11 no. It was -- I believe it was late -- late 2010 or early  
12 2010. I -- I don't know. But I did work for them.

13 ALJ WAKELEY: Okay. Okay. And you had some  
14 more questions for --

15 MS. BRADSHAW TUCKER: I --

16 ALJ WAKELEY: -- Ms. Gill?

17 MS. BRADSHAW TUCKER: I just had --

18 CHELSEA GILL

19 (Recalled as a witness, previously sworn, testified as  
20 follows:)

21 RECROSS-EXAMINATION

22 BY MS. BRADSHAW TUCKER:

23 Q On the non-protestable summary of previously redetermined  
24 the amount of principal -- the overpayment amount is  
25 listed at \$4,794.00, correct?

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1 A Correct.

2 Q And the penalty amount is 18,276?

3 A Correct.

4 Q And for a total at that time of 23,070. I can't testify,  
5 but I have a notice of payment due which I haven't offered  
6 as an exhibit, I will do so if you'd like  
7 --(undecipherable)-- Mr. Lucente pointed this out to me.  
8 This is one date January 2012. In fact, I'll make it even  
9 easier. What is the current overpayment balance, if you  
10 know it?

11 A I do not have a -- I do not know what the current  
12 overpayment balance is. He -- Mr. Lucente would have to  
13 contact the Agency. On that form there should be a number  
14 --

15 Q Okay.

16 A -- to contact the Agency.

17 Q Okay. I have -- on the notice of payment due which I have  
18 -- this is from 2012.

19 A Okay.

20 Q Showing that to you. The overpayment balance is  
21 dramatically bigger than it was on the non-protestable  
22 summary of benefits. I'm -- I'm looking at the  
23 overpayment amount, not the penalty. How much is that?

24 A The overpayment amount?

25 Q Yeah.

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1 A The current overpayment amount is \$6,966.00.

2 Q Okay. And that was in 2012?

3 A That is in 2012.

4 Q Okay. And in 2010 it was \$4,794.00?

5 A It was four -- yes.

6 Q Okay. And the penalty in that statement is what if you  
7 could read it?

8 A It has the penalty amount of \$26,964.00 as of February the  
9 24<sup>th</sup> of 2012.

10 Q And the total amount in February 2012?

11 A February of 2012?

12 Q Yes. Total amount then.

13 A 26,000 -- oh. I'm sorry. Are you saying what the total  
14 amount is, the current --

15 Q The --(undecipherable).

16 A -- penalty balance? Is that what you're --

17 Q The penalty and the overpayment amount.

18 A I'm not -- I'm sorry. I'm not understanding the question.

19 Q I'm sorry.

20 ALJ WAKELEY: Listed as --

21 BY MS. BRADSHAW TUCKER:

22 Q Current penalty. What's the current penalty balance,  
23 then? It doesn't -- it's not added up. I'm sorry.

24 A Okay. So, what -- the current balance is \$26,964.00.

25 Q Okay. So, 26,000 and 6,000 something is over 32,000,



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1           \$33,000.00, in there, just roughly? The overpayment  
2           amount plus the penalty.

3           A    No, because what it's telling you is that there is 26,000  
4           What it does not include in here is the interest that has  
5           occurred on here. So, for the period of time from when  
6           this termination was issued in 1010 (sic) there was  
7           interest occurred on what he owed daily. So, it's a 1  
8           percent interest daily if you --

9           Q    From 2010?

10          A    From 2010. So, there would be a dramatic increase if you  
11          have not -- again, the Agency didn't receive any contact  
12          until 2014. So, the interest would have occurred daily  
13          from 2010 to 2014 -- or, even 2012. However, it -- it was  
14          not broken down what the interest is on this notice of  
15          payment due.

16          Q    Okay. Would the interest keep occurring until such time  
17          as a payment was finally made?

18          A    The interest is going to occur daily until it is paid off.

19          Q    Until it is paid off?

20          A    Mm-hmm.

21          Q    And --

22          A    Yes.

23          Q    -- the current balance he currently owes is --

24          A    I -- I do not have that. I don't have that information.

25          Q    Mr. Lucente --

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1 MS. BRADSHAW TUCKER: Can we just ask what --  
2 how much is currently owed if he knows -- if anyone knows

3 MR. LUCENTE: I believe it --

4 ALJ WAKELEY: Well, hold on. Hold on.

5 MS. BRADSHAW TUCKER: Okay.

6 ALJ WAKELEY: (Undecipherable)-- before we go  
7 -- before we do that, the notice of payment due dated  
8 February 24<sup>th</sup>, 2012, is that the document you were showing

9 --

10 MS. BRADSHAW TUCKER: Yes. I'm sorry, your  
11 Honor.

12 ALJ WAKELEY: -- to Ms. Gill? All right.  
13 That's just one page. I'm going to enter that as Exhibit  
14 9. That's one page. Let's see, notice of payment due  
15 from February 24<sup>th</sup>, 2012.

16 MS. BRADSHAW TUCKER: Okay.

17 ALJ WAKELEY: Ms. Gill, did you have any -- any  
18 other information you wanted to explain regarding the  
19 payment or the amount due that you were being asked about?

20 THE WITNESS: No, other than, Judge, that  
21 interest is occurred daily with -- when you have penalties  
22 and restitution to the Unemployment Insurance Agency.  
23 That is handled with our benefits overpayment collections  
24 unit and they will give you more detail on how it is  
25 occurred on the principal. And I don't want to speak to



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1 that directly. But it is occurred daily until the  
2 restitution is completing paid off. If you are paying on  
3 your unemployment restitution you are still occurring 1  
4 percent interest daily until that restitution is paid off

5 ALJ WAKELEY: Okay.

6 MS. BRADSHAW TUCKER: Okay. And I just want to  
7 -- clean up question.

8 BY MS. BRADSHAW TUCKER:

9 Q The documents you had from MARVIN, those were sent to  
10 counsel after this appeal was initiated, correct?

11 A Correct.

12 Q Okay. We have -- I would note that -- do you believe that  
13 the entire file and all correspondence was in fact sent in  
14 November or not?

15 A November of --

16 Q November 15<sup>th</sup>, 20 -- November 2015 when we requested the  
17 entire file.

18 A I did not prepare that entire file so I'm not privy to all  
19 the information that was received that was mailed over to  
20 counsel during that period of time in which it was  
21 requested. So, that may have -- it did go to what is  
22 considered our foyer (ph) and then they prepared that  
23 information and if there was specific certifications I'm  
24 not sure exactly what was mailed over at that time.

25 Q Okay. And is it the custom of the Unemployment Insurance



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1 Agency to -- let me retry. Once someone has been found to  
2 have misled -- deliberately misled the Unemployment  
3 Insurance Agency is it not a fact that they are then  
4 barred from any appeal based on hardship grounds?

5 A Could you re-frame that question?

6 Q Okay.

7 A I'm not exactly sure --

8 Q If --

9 A -- what you're --

10 Q If --

11 A -- asking.

12 Q If you wish to appeal on hardship grounds --

13 A Oh. Financial hardship?

14 Q Yes.

15 A Okay. Okay.

16 Q If you have found them guilty of misrepresentation do you  
17 allow them to do that?

18 A No. If you are -- if you -- there is Agency adjudication  
19 that's issued that stated that you intentionally misled  
20 the Agency in order to receive benefits a request for  
21 financial hardship is not granted.

22 Q Okay. Does the Agency ever consider the financial  
23 circumstances of the claimant in assessing the penalty?

24 A At the time of adjudication or --

25 Q At the time --

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1 A -- during the period of --

2 Q At the time --

3 A -- of financial hardship?

4 Q No. At the time the Agency makes the finding and a -- a  
5 determination and --(undecipherable)-- summary and  
6 assesses a penalty does it consider the financial  
7 circumstances of the claimant -- for the claimant at that  
8 time?

9 A At the time of adjudication the Agency is going to base  
10 its information off of what -- the available information  
11 that it has. However, to ask -- answer that question, the  
12 Agency will consider if you request a financial hardship  
13 your earnings during that period of time. I mean, your  
14 overall earnings.

15 Q (Undecipherable). Does the Agency if it finds that there  
16 are -- in any case that there had been misrepresentation  
17 does it habitually request a quadruple penalty?

18 A The Agency will find its -- yes. Depending on the amount  
19 of restitution that is owed, yes.

20 Q Okay. So, it will be -- if it is under X amount, 500 --

21 A It's two times.

22 Q And if it over 500 --

23 A It will be four times.

24 Q It would be four times. And that is done automatically  
25 without reference to the ability of the claimant to pay?



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1 A It would be -- yes, it will.

2 MS. BRADSHAW TUCKER: Thank you.

3 ALJ WAKELEY: Okay.

4 EXAMINATION

5 BY ALJ WAKELEY:

6 Q Ms. Gill, anything else on that point?

7 A Yes, Judge. The Agency would like to ask the court to  
8 review its document 6 that was in the Agency case file  
9 prepared for this hearing which was Mr. Lucente's -- these  
10 are wages that were reported for his -- by his employers.  
11 And, again, it was the payroll company in which he already  
12 established that they were payroll companies but he was  
13 working for Baton. Okay.

14 So, he was working for Baton at the time.  
15 However, the Agency does the review the quarterly wages.  
16 So, on page 6 the quarterly wages were submitted by the  
17 employer because their account is normally charged during  
18 that period of time and that's how the Agency does become  
19 aware of when a claimant is working and how much  
20 approximately they are receiving on a quarterly basis.  
21 And based off of the financial quarterly wages Mr. Lucente  
22 had substantial wages in 2012, 2013, 2014, 2015 during  
23 that period of time.

24 MS. BRADSHAW TUCKER: He wasn't collecting  
25 unemployment benefits though at that time. Sorry.



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1 THE WITNESS: And even based off of those wages  
2 if he was not --

3 BY ALJ WAKELEY:

4 Q Well, Ms. -- Ms. Gill, I think the point was the Agency  
5 just assesses the maximum fraud penalty when there's --

6 A Correct.

7 Q -- a finding of fraud? Okay. Does it matter what the  
8 employer would have reported as far as Mr. Lucente's  
9 earnings at the time?

10 A Well, it definitely would show how much -- the Agency  
11 would look at that to see how much his quarterly wages  
12 were, whether or not they were full-time wages.

13 Q Would that have anything to do with the amount of fraud  
14 penalties assessed?

15 A No, it would not.

16 ALJ WAKELEY: All right. Okay. Ms. Bradshaw  
17 Tucker, did you have any --

18 MS. BRADSHAW TUCKER: I --

19 ALJ WAKELEY: -- any other --

20 MS. BRADSHAW TUCKER: -- don't have anything  
21 further.

22 ALJ WAKELEY: Okay. All right. Ms. Gill, was  
23 there anything --

24 MS. BRADSHAW TUCKER: (Undecipherable).

25 ALJ WAKELEY: I'm sorry?

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1 MS. BRADSHAW TUCKER: Unless we are allowed to  
2 make a closing statement.

3 ALJ WAKELEY: You -- you will be allowed to.  
4 Ms. Gill, was there anything else that you wanted to  
5 present?

6 MS. GILL: No, Judge.

7 ALJ WAKELEY: Okay. Ms. Bradshaw Tucker, you  
8 had an argument. You can go ahead.

9 MS. BRADSHAW TUCKER: If I may. Your Honor, at  
10 the time he was laid off in 2008 -- I mean, we all know  
11 what was going on. It was one of the -- the worst  
12 recessions the country has had since the depression. He  
13 was a victim of it. He was unemployed. Things did not go  
14 well for him, he was homeless, he was moving from place to  
15 place, his mental state was bad, he was extremely  
16 depressed, he's unhealthy, and --(undecipherable)-- he  
17 gets a job and he does make an error. He says he's  
18 confused, he wasn't thinking straight, he has trouble  
19 remembering things.

20 It is, however, as she's shown, that he did in  
21 fact say that he was working when he was not. However,  
22 the Agency received no answer to anything it sent him,  
23 none at all. Most people I know if they get something  
24 that says they owe \$23,000.00 would react in some way. He  
25 has never to this day received any formal notification



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1 from the Agency that they're even investigating him. He  
2 hasn't had a single opportunity yet to plead his case.  
3 This is the only time he's had.

4 He has been very willing to repay the Agency  
5 for the money that he should not have received. And when  
6 he found he was being garnished he didn't contest it  
7 because he was, like, "Yeah, I shouldn't have received  
8 that money. It was wrong" and he felt relief because  
9 finally he could do that. However, all this time no  
10 contact from the Agency. He had no reason to tell them  
11 he'd changed his address because he was done receiving his  
12 benefits. They were done. He had no reason to get back  
13 in touch. His contact with the Agency was by telephone.  
14 Their contact with him was by mail.

15 We go through years where there's no contact,  
16 findings are made, penalties are imposed, interest is  
17 imposed, everything's mounting up and the poor claimant  
18 has no idea that it's even occurring. He made a mistake  
19 in 2014. He should have called the Agency and found out  
20 what was going on but he had no idea what he was facing,  
21 what penalties could be imposed so he didn't. It was when  
22 he realized that there's something really weird with this  
23 garnishment, that "I've paid thousands of dollars and it's  
24 not going away" -- that's when he called the Agency and  
25 the Agency tells him basically "We can't help you.



1 There's nothing we can do."

2 He gets in touch with our firm, we try to  
3 appeal, and we're told "Sorry, you should have appealed  
4 this several years ago." But how could he appeal it  
5 several years ago? He didn't even know about it. So, as  
6 far as the statute, he never received notice so it never  
7 even began to run. So, this appeal should be heard.  
8 Second issue in this appeal is basically the penalty. The  
9 statute involved allows the Agency to impose, as she said,  
10 a double penalty if the amount is under 500, a quadruple  
11 penalty if it is more. That is not an automatic  
12 imposition, that is something that may be done.

13 And this is why it was so important that Mr.  
14 Lucente had been afforded a chance to represent himself to  
15 give his facts to the Agency because while he may be  
16 making decent money, I think we heard he's making 20, 25,  
17 in there, around 20, so, that's around 40,000 a year, he  
18 is still paying child support and he is paying off the  
19 Agency and he has once again been subject to another  
20 period of unemployment when he was not eligible to receive  
21 benefits because he'd been found to have misrepresented  
22 himself to the Agency.

23 The Agency didn't have to impose any penalty at  
24 all. And before they make the decision on what penalty to  
25 impose they should get some information on the ability of

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1 the claimant to actually pay it. Not only -- that never  
2 happened. That is not the Agency's procedure. Their  
3 procedure is if you're -- if it's over this amount, bang,  
4 you get a quadruple penalty. That means that the penalty  
5 falls as hard on someone who's making modest wages as on  
6 someone who may be a lawyer or a doctor who's making  
7 several hundred thousand a year. I wish. Not in my case

8 But that is the point, that he never had that  
9 chance because he never had notice, he never had an  
10 adjudication, he never had a hearing, he's never had a  
11 response to -- a chance to respond to the Agency's  
12 findings, a chance to represent his case until right now.  
13 And what he's asking is that the Agency accept the payment  
14 he has made which is, I believe, more than the \$4,794.00.  
15 We can find that. If he has in fact repaid \$4,794.00  
16 which is the amount of the original overpayment or more  
17 that the Agency accept that amount.

18 There should be no interest from 2010 onward  
19 because he didn't even know back then that there had been  
20 a finding against him. And to impose interest on a  
21 penalty and this -- a repayment amount of which someone  
22 wasn't aware is -- I mean, if you took out a loan on your  
23 house and they said it -- well, if you bought a house and  
24 you thought you paid it off and then you found out that  
25 actually it was a loan and someone was charging you 15



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1 percent interest and had been doing so for 10 years it  
2 would be very upsetting and you'd say "That's wrong. You  
3 didn't tell me about that."

4 He has been living in limbo. He's very willing  
5 to pay back. He -- I mean, look at him, he is -- I can't  
6 say contrite, but, I mean, this is someone who sincerely  
7 wants to do the right thing. He was on the right track.  
8 He wants to get his life back on the right track. And it  
9 is very hard for him to do this when he is paying a  
10 penalty and fee that will never go away.

11 At the rate he's going now he will be  
12 continuing to pay back the UIA for another 20 plus years.  
13 We don't even make people who are convicted of felonies  
14 pay 20 years. Okay. All he's asking is that the amount  
15 that he had paid to date if in fact it is the amount that  
16 he was overpaid be accepted and that the penalty be  
17 waived.

18 ALJ WAKELEY: All right. Thank you. Ms. Gill,  
19 any final comments?

20 MS. GILL: Yes, Judge. According to the  
21 testimony that was given today, Judge, Mr. Lucente is  
22 aware that he was certifying with MARVIN while still  
23 employed. At the time that garnishment was imposed on him  
24 through his employer he never contacted the Agency to make  
25 any type of arrangements with the Agency at all during



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1 that period of time or to find out what the dollar amount  
2 was that he owed.

3 So, the appeal process could have started  
4 during 2014. The Agency did not receive -- even at the  
5 time that he contacted his attorney in November 25 -- 2015  
6 the Agency did not -- still did not -- and that was a  
7 request just for his records. The Agency still did not  
8 receive a timely -- did not receive a protest. Not  
9 timely. Did not receive a protest until January of 2011  
10 which is beyond the Agency statute of receiving a timely  
11 protest. Which, it was way beyond a year.

12 Now we're looking into almost six years after  
13 the original determination was made and two years after  
14 the garnishment was issued out. However, based off of the  
15 review of the information and the testimony that was  
16 received Mr. Lucente was employed and receiving benefits  
17 at the same time and he continued his employment. You  
18 know, despite his health conditions, his mental state  
19 during that period of time he continued his employment and  
20 was still gainfully employed several years after that  
21 after receiving both unemployment benefits and working  
22 full-time.

23 ALJ WAKELEY: Okay. All right. I don't have  
24 anything further from -- any further requests from either  
25 party. Like I said before, I do have to create a record

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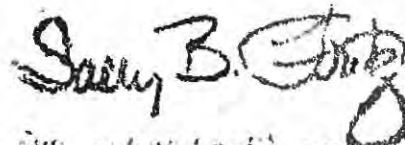
1 for the other appeal that we have this morning. That will  
2 just take a moment. So, I will ask you all to just stand  
3 by while we do that. The time is now 10:29 a.m. and the  
4 record is closed.

5 (Hearing concluded.)

6 (Tape off.)

STATE OF MICHIGAN)  
 ) SS  
COUNTY OF INGHAM )

I HEREBY CERTIFY that the foregoing testimony and proceedings, consisting of 81 typewritten pages, was mechanically recorded at the time and place hereinbefore set forth; was thereafter reduced to typewritten form; and that the foregoing is a full, true, and correct transcript of the recording so taken.



Sally Fritz, CER 7594  
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COMPLETED: September 27, 2016

MICHIGAN ADMINISTRATIVE HEARING SYSTEM

BUREAU OF HEARINGS

DIVISION OF UNEMPLOYMENT APPEALS

FRANK LUCENT,

CLAIMANT

APPEAL DOCKET NO.: 2016-014572

DART PROPERTIES II, LLC,

EMPLOYER

Testimony taken and proceedings had in the above-entitled matter before Administrative Law Judge Michael Wakeley, at 13<sup>th</sup> Floor, Suite 13-450, 3024 West Grand Boulevard, Cadillac Place, Detroit, Michigan 48202, on Monday, July 18, 2016, commencing at 10:29 a.m.

APPEARANCES:

FRANK LUCENTE

CLAIMANT

LAURA BRADSHAW TUCKER

CLAIMANT ATTORNEY

CHELSEA GILL

UIA EXAMINER

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2016-014572

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None

WITNESSES: EMPLOYER

None

EXHIBITS

None

IDENTIFIED

RECEIVED

2016-014572

1 Detroit, Michigan

2 Monday, July 18, 2016

3 \* \* \* \* \*

4 P R O C E E D I N G S

5 ALJ WAKELEY: This is docket number 16-014572.

6 Today is July 18<sup>th</sup>, 2016, the time is 10:29 a.m. My name  
7 is Administrative Law Judge Mike Wakeley with the State of  
8 Michigan. We are in person in the Detroit office of the  
9 Michigan Administrative Hearing System. Just a minute ago  
10 I concluded the record for docket number 16-014604 for  
11 claimant, Frank Lucente, and employer, Dart Properties.  
12 The claimant, Frank Lucente, his attorney, Laura Bradshaw  
13 Tucker, and Chelsea Gill from the Unemployment Agency,  
14 participated in the previous hearing and are still present  
15 with me in the hearing room.

16 During docket number 16-014604 I informed the  
17 parties I would hear all of their evidence for all of the  
18 issues covering both appeals this morning and incorporate  
19 that evidence by reference into this record for docket  
20 number 16-014572.

21 I do need to swear in the parties for this  
22 recording as well, so Mr. Lucente and Ms. Gill, please  
23 raise your right hands. Do you solemnly swear or affirm  
24 that the testimony you give today will be the truth, Mr.  
25 Lucente?

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1 MR. LUCENTE: I do.

2 ALJ WAKELEY: Ms. Gill?

3 MS. GILL: Yes, Judge.

4 (At This Time, All Witnesses Sworn)

5 ALJ WAKELEY: All right, thank you. And I did  
6 already hear all of the evidence presented by both parties  
7 for all of the issues this morning. Ms. Bradshaw Tucker,  
8 was there anything else you wanted to add to the record?

9 MS. BRADSHAW TUCKER: Your Honor, I --  
10 (inaudible)-- have a copy of it, but...

11 ALJ WAKELEY: Okay. All right, thank you. Ms.  
12 Gill, anything else you wanted to add to the record?

13 MS. GILL: No, Judge.

14 ALJ WAKELEY: Okay. I want to thank all of you  
15 for participating this morning and for your patience as we  
16 completed both records. I will review the information you  
17 provided and I'll send out my written decisions within the  
18 next 10 days. The time is now 10:31 a.m. and the record  
19 is closed. Thank you all, have a good day.

20 MS. GILL: Thank you.

21 MS. BRADSHAW TUCKER: Your Honor, thank you so  
22 much for --(inaudible)-- along.

23 ALJ WAKELEY: All right.

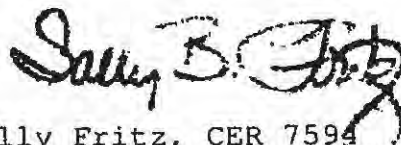
24 (Hearing concluded.)

25 (Tape off.)



STATE OF MICHIGAN)  
 ) SS  
COUNTY OF INGHAM )

I HEREBY CERTIFY that the foregoing testimony and proceedings, consisting of 5 typewritten pages, was mechanically recorded at the time and place hereinbefore set forth; was thereafter reduced to typewritten form; and that the foregoing is a full, true and correct transcript of the recording so taken.



Sally Fritz, CER 7594  
THERESA'S TRANSCRIPTION SERVICE  
P.O. Box 21067  
Lansing, Michigan 48909-1067  
(517) 882-0060

COMPLETED: May 15, 2017

**GWINN TAURIAINEN PLLC**

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January 11, 2016

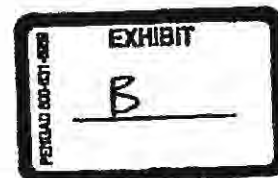
VIA FACSIMILE ONLY (617) 638-0427

State of Michigan  
LARA – Unemployment Insurance Agency  
P.O. Box 169  
Grand Rapids, MI 49501-0169

Re: Frank Lucente, Claimant  
SS: [REDACTED]  
Claimant MIN: 0337484032

Dear Agency Representative:

Our office represents Frank Lucente. Mr. Lucente appeals a Non-Protestable Summary of Previously (Re) Determined Restitution with an original mail date given as December 1, 2010 and two documents captioned Notice of Redetermination both with an original mail date given as January 1, 2010. One of the two Notice(s) of Redetermination states Claimant Lucente "worked full-time for Dart Properties II LLC beginning 2/16/10," a time he was collecting unemployment benefits, and was therefore "ineligible for benefits under section 48 of the MES Act" and must pay restitution. The other Notice states that Mr. Lucente's actions "are considered to have been intentional" and that he "intentionally withheld information to obtain benefits." The restitution requested in the Non-Protestable Summary consists of an overpayment amount of \$4,794 and a penalty of \$18,276 (quadruple the overpayment amount). According to UIA files, that amount was changed at some point to a principal (overpayment) of \$8,986 and a penalty of \$26,964; the reason for the change does not appear in the "complete file" sent to this office on or around November 23, 2015.



19 1.5 38



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Mr. Lucente requests waiver of the penalty because imposition of the penalty is an overly harsh response for the conduct alleged and the circumstances of the Claimant that will result in undue financial hardship, and because Claimant's due process rights were circumscribed where there is no evidence he received any of the documents mailed him by the UIA, and where the UIA itself is unable to provide a correct mailing date for several of these documents or a complete copy of Claimant's UIA file.

Further, Mr. Lucente has repaid the entire overpayment amount and has made some payment toward reducing the penalty amount; requiring full payment of the penalty would be contrary to "equity and good conscience" under MCL 421.62(a).

### FACTS

The Great Recession of 2008–2010 claimed many victims. Claimant Frank Lucente was one of them.

In July 2008, he lost his job as a maintenance worker with Helm in Highland Park, Michigan and applied for unemployment benefits through Michigan's Unemployment Insurance Agency (UIA), receiving \$362 per week. In February 2009, he made an emergency application for additional benefits. In September 2009, still out of work, he filed for and received extended benefits. But it wasn't nearly enough.

After he lost his job, things went downhill for Claimant. Without a job, he was unable to pay his rent and was evicted. For several months he stayed with family and friends; he became depressed and anxious, and began to suffer from panic attacks – depression and anxiety that continues to plague him. He retreated from the people who would help him. He hit rock bottom in mid-2009, moving into Matt's Salvation Army on 10 Mile and Mound in Warren, before a friend took him in, and allowed him to pay a modest rent on a shared apartment. But it was a short-term solution; Mr. Lucente continued to move from place to place for over a year.

In February 2010 Claimant found a job as an apartment manager with Dart Properties in Mason, Michigan. He began working on February 16, 2010. To receive extended benefits, Claimant had been required to file a weekly record of his search for work, listing all employers contacted; he continued to look for work after he started at Dart Properties. Because he would not receive any pay from his new employer until the next pay period, Claimant believed he was still eligible for extended benefits and submitted his weekly record, as usual, for the weeks ending February 20 and February 27. Once he started to receive a pay check from Dart, he stopped submitting a weekly record of his work search and made no additional requests for extended benefits.



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However, he continued to certify his eligibility on MARVIN until his weeks of eligibility expired in June 2010, after which he made no further contact with the UIA. He erroneously believed that once awarded, he was entitled to receive the funds set aside for his benefit year; they were not revocable.

In July 2010, the UIA contacted Claimant's employer and was informed Claimant had been working continuously since February 16, 2010 (Exhibit 1). On July 7, 2010, a Request for Information (Exhibit 2) was mailed to Claimant at a P. O. Box in Centerline. Mr. Lucente had cancelled his P.O. Box rental effective June 11, 2010; he never received the Request for Information. If he had done so, he would not have realized that he was in deep water. The Request for Information failed to state that, should Claimant's answers reveal evidence of fraud, he could be face criminal prosecution and/or be held liable for sums equal to four times the amount of the UIA benefits he received after he began to work full time. MCL 421.54.

The UIA followed its Request for Information with a Notice of Redetermination (Exhibit 3) which stated, "You worked full-time for Dart Properties II LLC beginning 2/16/10. As such, you are ineligible for benefits under Section 48 of the MES Act. You were paid, so restitution is required, as shown, under section 62 of the Act." A "recreation" of this letter was sent to Claimant on November 23, 2015. Due to the UIA's conversion in 2013 from its mainframe system to the current system, MiDAS, original copies of determinations and redeterminations prepared on the old system are no longer available. However, the Unemployment Insurance Agency is able to "recreate a determination ... duplicating the exact information, including original mail dates shown on the original document." The recreated document fails to show the address to which the original was sent; the mail date shown on the recreated Notice of Redetermination is January 1, 2010 – over a month before Claimant found the job with Dart Properties. Another "recreated" Notice of Redetermination (Exhibit 4) – which also fails to show the address to which it was sent and bearing the same "original mail date" of January 1, 2010 – would have informed Claimant, had he received it, that his actions were considered intentional.

The copy of Claimant's file sent to this office by the agency on or around November 23, 2015 is incomplete; it contains a Summary of Previously (Re) Determined Restitution (Exhibit 5) but not an original Summary of Restitution. It has a request for garnishment directed to one of Claimant's recent employers (Exhibit 6), but not a copy of the request directed to his current employer (Claimant's wages are currently being garnished). Many of the re-created documents show the address to which they were sent on November 23, 2015, but not the address to which they were originally sent.

Although the Agency received no answer to any of its mailings, it apparently continued to the next stage of the process (the file received by this office appears to be



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incomplete): According to UIA files, the Non-Protestable Summary of Previously (Re) Determined Restitution was sent on December 1, 2010 (the date on the recreated document). The penalty amount on this Summary is listed as \$18,278.00, the principal – the amount Claimant was overpaid – is \$4,794.

In February and March 2012 the Agency sent Claimant two Notice(s) of Payment Due to an address on Denton Street in Clinton Township (Exhibit 7). Claimant did not live at that address; he did not receive the letters. In April and May 2012 the UIA a Second Notice of Payment Due and a Final Notice of Payment Due, both to the Centerline P.O. Box (Exhibit 8), an indication that the first two letters may have been returned. Mr. Lucente no longer rented the mailbox; the mail would not have been forwarded. On these documents, the amount due is listed as an overpayment \$8,966 and a penalty of \$26,964. The interest is listed as "0." No document indicating the reason for the dramatic increase is contained in Claimant's UIA file.

In May 2013, Claimant was let go from his job with Dart Properties.

On October 29, 2013, the UIA sent Claimant a Notice of Garnishment. The address on the duplicate of this letter, contained in the copy of Claimant's UIA file, is the P.O. Box in Centerline. There is no signed copy of this document in the file. In December 2013 the UIA sent payment vouchers to Mr. Lucente; the vouchers were sent to the Centerline P.O. Box. Although Claimant's UIA file does not contain the UIA's full correspondence with Mr. Lucente's employers, requesting garnishment, the Agency began garnishing his wages in 2014, shortly after he began to work for Vensura Inc. A wage garnishment request and order, signed and dated by a Tammy O'Keefe at Vensura on April 23, 2014 is contained in Claimant's UIA file.

Claimant first learned of the findings against him in the summer of 2014, when his then-employer, Vensura, informed him they had received a request for garnishment.

Since August 2014, he has repaid the entire principal; but has been unable to make much of a dent in the penalty. Claimant's current take-home pay is about \$3,000 a month. From this, he must pay \$785 in child support, \$625 in rent, \$431 for a used car, \$285 for car insurance, \$130 in health insurance, \$170 in credit card debt, and roughly \$850 for utilities, phone, Internet, gasoline, food and clothing. Claimant has cut his expenses to the bone, and is only just able to make ends meet; the additional burden of the UIA penalty prevents him from moving forward and becoming the responsible citizen he was before he lost his job in 2008.



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### ARGUMENT

I. Mr. Lucente should not be required to pay a quadruple penalty where his actions in continuing to certify on MARVIN were based on a mistaken understanding of his benefit eligibility.

From late February to June 2010 Claimant continued to certify his eligibility to receive benefits and continued to receive benefits from the UIA, despite the fact he was working full-time. Claimant, suffering from severe depression and anxiety in 2010 after two years without work, believed that the benefits, once awarded, belonged to him. He did not realize – as he should have – that his benefits ended when he began to work full time.

When Claimant received the money from the UIA, he believed it was "his" and accepted it under a claim of right. His intent was not to defraud, but to retain control of something that belonged to him. As such, his actions – while ill-advised and ill-informed – lacked the necessary element of intent to qualify as fraud. Thus, waiver may be proper under MCL 421.62 as the incorrect information provided to the UIA was not made with fraudulent intent.

II. Mr. Lucente should not be required to pay a quadruple penalty, where no consideration of the facts of the alleged offense or the circumstances of the offender were made before the maximum penalty was imposed and where a quadruple penalty is contrary to "equity and good conscience" under MCL 421.62a.

The statute outlining the penalties for a making a "knowing false statement or representation or the knowing and willful failure to disclose a material fact" in order to receive unemployment benefits requires restitution of the full amount received as a result of this fraud. However, the imposition of additional penalties is permissive; the statute states that the agency *may* also recover damages equal to 4 times "the amount obtained by the false statement. MCL 421.54(b)(ii) (emphasis added). The Agency may also refer the case to the prosecutor, who may then seek recovery of the overpayment amount (restitution) and also request imposition of a term of prison for not more than one year, or may require the performance of up to 2,080 hours (no more than one year) of community service. MCL 421.54(b)(iii)(A)(i) and (ii).

Assuming, for the sake of argument, that Mr. Lucente acted with fraudulent intent, the amount of the penalty is out of proportion to the crime committed and its automatic imposition without consideration of Mr. Lucente's circumstances not only violates the basic tenets of justice but also amounts to discrimination based on wealth violating the



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equal protection clause and, further, is an excessive fine, contrary to the Eighth Amendment.

Mr. Lucente works in maintenance. His income is above the federal poverty level, but he is in the bottom economic quartile. While paying fines totaling over \$30,000 might be unwelcome to a white collar professional, to a man like Mr. Lucente it is a financial disaster. The statute clearly recognizes that the ability of the Claimant to pay a penalty is a factor that must be considered before the UIA demands payment of quadruple the restitution amount. It is because this factor must be considered that the statute gives the Agency discretion on whether or not to seek imposition of a penalty, and, if imposed, the size of the penalty. It is why the prosecutor may ask that a Claimant found guilty of making misleading statements to the UIA serve a prison term, or simply serve community service. And it is a factor that was not considered in this case.

The automated system currently used by the UIA, while allowing the agency to process more claims more quickly, does not have the ability to review the particular facts of each case and each Claimant. This inability sometimes results, as it has in this case, in a penalty that is effectively a sentence to life on the financial edge, and violates the spirit and purpose of the Michigan Employment Security Act, "to safe guard the general welfare by dispensing benefits to ameliorate the disastrous effects of involuntary unemployment." *Schultz v Oakland County*, 187 Mich App 88, 102-103 (1991). Mr. Lucente fully experienced these disastrous effects; in the depth of that disaster is the origin of his wishful belief that he could continue to receive benefits while working.

A court, when imposing sentence in a criminal case, should ensure the sentence is "tailored to the particular circumstances of the case and the offender in an effort to balance both society's need for protection and its interest in maximizing the offender's rehabilitative potential." *People v McFarlin*, 389 Mich 557, 574 (1973). In the present case, no consideration has been made of Mr. Lucente's particular circumstances. As for reformation, since he learned of the actions taken against him, Mr. Lucente has not only been made aware how misguided was his belief that he could continue to collect benefits while working, but has paid a high price for his actions -- which resulted in rendering him destitute when he was again unemployed -- and has repaid the state for the money he wrongly received. He got the message. To require payment of the penalty will prevent Mr. Lucente from moving forward and thus impede his "rehabilitative potential."

In the criminal context, the Michigan legislature recognized more than 10 years ago with Public Acts 665, 666 and 670 of 2002, that placing a defendant on probation for life is itself an injustice, a sentence that restricts a defendant's reasonable life choices far beyond that merited by the misconduct and often needlessly requires continued supervision. The penalty here is analogous to lifetime probation -- it will continue long



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after Mr. Lucente has "learned his lesson" and, like lifetime probation, will operate as a continual bar to his full participation in society.

The penalty imposed here not only fails to consider Mr. Lucente's ability to pay, but is also out of proportion to the crime committed. If Claimant had committed a *larceny* of an item valued between \$1,000 and \$20,000, the maximum sentence he could face would be five years in prison or a fine of "not more than \$10,000 or three times the value of the property stolen." MCL 750.356(3)(a). Here, where the property taken was that which the state was willing to award him, as long as he was out of work, he is subject to a penalty of *four times* the amount he received, plus interest – in addition to repayment of the original amount. The punishment for this crime – a crime against which he was unable to defend himself in court, a right that would have been his if he had stolen money from a business or someone's home – will be unending. Claimant does not have the resources to pay \$125 every month, a repayment that would take him decades.

For these reasons, Mr. Lucente ask that this Agency review its decision to impose the maximum possible penalty, and accept the full restitution Mr. Lucente has already paid and his payments toward the penalty, as payment in full and consider the matter closed.

III. The penalty against Mr. Lucente must be waived where Mr. Lucente was denied his due process rights to present facts in defense or mitigation where he never received notice of the UIA's finding that he had been ineligible for the benefits he received, its finding he had been guilty of fraud, and its decision to demand full restitution and a quadruple penalty until several years after the conduct alleged.

The United States government, through the Department of Labor, provides monetary grants to states, including Michigan, in support of state unemployment insurance programs. Federal law establishes minimum due process requirements for states receiving these grants. As outlined in 28 USC Section 6402(f)(3), states (like Michigan) that accept funding for unemployment programs from the federal government are barred from pursuing collection of unemployment compensation debts, including penalties, through collection actions and the interception of federal income tax refunds, unless certain steps are taken with regard to notice, consideration of evidence, and a fair opportunity to be heard. States must provide specific notice, afford claimants at least 60 days to present evidence and consider evidence from the claimant in determining whether the alleged fraud or other overpayment debt can be enforced.



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These minimum due process requirements must be afforded to all claimants, regardless of whether or not the claimants are ultimately determined to be "guilty" or "innocent" of obtaining UIA benefits through fraud or other improper means.

At the time the UIA first wrote Claimant, requesting information, his benefit year had expired. Mr. Lucente believed his relationship with the UIA was at an end and he therefore had no obligation to keep the UIA apprised of his current address. Once a claimant's benefits have been exhausted, he or she has no obligation to inform the UIA of current address or any subsequent employment unless the claimant requests additional benefits. Mr. Lucente had no reason to keep the Agency informed of his address or employment.

Information sent to Mr. Lucente at the P.O. Box after June 11, 2010 (claimant can provide the UIA verification that the P.O. Box service had been stopped in June 2010) would have been returned to sender. The Agency failed to provide Mr. Lucente adequate notice of the actions taken against him, its finding that he was guilty of fraud and its decision to impose the maximum financial punishment for that fraud and denied him his due process rights.

During the time the Agency mailed Claimant its request for information, its findings, its restitution summary, demands for payment and request for garnishment, Mr. Lucente had no fixed address, and did not receive any of these letters. The Agency was, or should have been, aware that its communications were not being received. Claimant can demonstrate he was not at the addresses to which the UIA sent these communications; the majority of these letters would have been returned to the Agency.

Specific notice requires more than sending a letter to a party's last known address, as shown by court rules requiring service by registered mail or personal service, MCR 2.105-106.

Where there has been no notice, the UIA cannot move from a Request for Information to a Final Payment Request. To do so, as here, denies the claimant his or her right to present evidence, and denies the UIA its right to consider this evidence, and to consider facts in mitigation of the conduct of which it complains and facts which would support a finding that a quadruple penalty is unreasonable given the circumstances of this Claimant.

Where a UIA employee might have noted Mr. Lucente's apparent silence in response to its requests for information, and then for payment, no employee was given the opportunity to consider the issue: The Agency relies on an automated system, MiDAS. While this system enables the Agency to coordinate collection procedures with employers, other state agencies and the federal government and helps alert the Agency



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when there is information that might have some bearing on a claimant's qualification for benefits, its automated nature results in claimants being denied due process rights.

MIDAS does not provide claimants with specific notice of the basis for the UIA's suspicion of fraud or other culpable conduct. MIDAS does not include or allow for an actual fact-based adjudication of whether the claimant engaged in culpable disqualifying conduct; it does not allow a claimant 60 days in which to present evidence, and does not include or allow for consideration of evidence by the Agency. MIDAS, unlike an actual Agency employee, does not *think*; it cannot reason or question. It cannot respond to letters, it cannot weigh evidence, it cannot consider the particular circumstances of any claimant alleged to have been guilty of misrepresentation. It will continue from Step A of a process it initiates to Step B, then to Step C and then to a pre-set punishment without input from the claimant whose life will be affected by its automated findings.

The Agency erred in its reliance on its automated system, denying Mr. Lucente his due process rights. The Agency also erred, denying Mr. Lucente his right to review and question its findings, when it failed to provide him a complete copy of his UIA file.

Where Mr. Lucente was denied his due process rights by the Agency's failure to provide notice, to consider facts in mitigation, and to provide Claimant with access to his complete file, the Agency's findings and the imposition of the maximum financial penalty are without support. Mr. Lucente, however, now understands that he was incorrect in his belief that he was entitled to the benefits he received while working; he acknowledges the Agency's right to reimbursement. However, where he was denied the opportunity to demonstrate both that the penalty should have been waived because he lacked the requisite intent, and where he was denied the opportunity to present evidence that the quadruple penalty was excessive given his financial circumstances, that penalty must be waived.

If you have any questions, please call.

Very truly yours,

GWINN TAURIAINEN PLLC



Daniel A. Gwinn

Enclosures

cc: Frank Lucente

011116F02PBA010100052196

EXHIBIT 1  
Letter from Dart

RECEIVED by MSC 9/9/2020 8:16:51 PM



Form 11-99  
(Rev. 07/08)

STATE OF MICHIGAN  
Department of Energy, Labor & Economic Growth  
UNEMPLOYMENT INSURANCE AGENCY

See "For Employers" at bottom for non-compliance penalty.  
Office No. 023

REQUEST FOR INFORMATION RELATIVE TO POSSIBLE  
INELIGIBILITY OR DISQUALIFICATION

Authorized by MCL 421.1, et seq.

BY: 07/27/2008 138  
UNEMPLOYED WORKER: 4637  
LUCENTE FRANK

RECEIVED JUL 09 2010

DART PROPERTIES II LLC  
500 HOGSBACK ROAD  
MASON MI 48854-9541

RETURN FORM TO:  
UNEMPLOYMENT INSURANCE AGENCY  
PO BOX 189  
GRAND RAPIDS MI 49501-0159  
FAX NUMBER: 1-517-636-0427

Inquiry Line: 1-866-500-0017  
TTY Customer: 1-866-366-0004

EMPLOYER NUMBER: 1562346 000

You are involved in a claim for unemployment benefits, either as the employer or as the unemployed worker. The Unemployment Insurance Agency (UIA) needs the information below in order to make a determination on eligibility or qualification for benefits.

Please answer all the questions below. If additional space is needed enter your answers on the back of this form or attach additional sheet(s) if necessary. If a question does not apply or you choose not to answer it, enter "n/a" (not applicable). In completing this form provide in complete and specific detail all information you believe would be helpful to us. If a reply is not received by the UIA within 10 days of the Date Mailed shown below, a (re)determination will be made on the basis of the available information. Mail or fax your answers to the return location indicated on the top of this form. You should keep a copy of the completed form for your records.

PROVIDE COMPLETE DETAILS REGARDING THE CLAIMANT'S SEPARATION.

PLEASE LIST ALL DISCIPLINARY ACTION(S) INITIATED PRIOR TO SEPARATION.

WAS THE CLAIMANT SEPARATED FOR VIOLATION OF COMPANY RULE(S)? WHAT IS/ARE THE RULE(S)? HOW WAS THE CLAIMANT MADE AWARE OF SUCH RULE(S)?

PLEASE SEND A COPY OF COMPANY POLICY AND/OR CONTRACT PROVISIONS THAT SUPPORT YOUR ACTION(S).

Date Mailed Month 07 Day 07 Year 2010 Interviewer A. ADJUD TASK FORCE

YOUR ANSWERS

If necessary, continue on reverse side.

See attached

\* 3 7 4 8 2 4 6 3 : U C 1 7 0 7 0 7 2 7 2 0 0 8 \*



071610G0042029  
011116F0210801A40052198

1. The claimant is not separated. He has been working for us continuously since 2/16/10.
2. N/A
3. N/A
4. N/A

Form 1000  
(Rev. 07/00)  
Revision Date

011116F0210001640052199

Unemployed  
Worker's Name:

FRANK LUCENTE

Employer Name:

DART PROPERTIES II LLC

SSN:

██████████-4637

Employer Account Number: 1562346 000

Onset Year Beginning:

07/27/2008

Complete your answers here. Attach additional sheets, if necessary.

**UNEMPLOYED WORKER:** You are required to respond to this form within 10 days of the Date Mailed shown on the front of this form.

Most recent occupation \_\_\_\_\_ ☐ Full-time ☐ Part-time Work schedule \_\_\_\_\_  
Your first day worked: \_\_\_\_\_ Last day worked: \_\_\_\_\_ Most recent wage: \_\_\_\_\_  
☐ hourly ☐ weekly  
Your name (please print) \_\_\_\_\_ Phone: ( ) \_\_\_\_\_  
Your Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FOR EMPLOYEES:** You are requested to respond to this form within 10 days of the Date Mailed shown on the front of this form, whether you feel payment(s) on this claim should be allowed or denied. If you fail to respond timely, you will not receive credit for benefits paid prior to receipt of the information, even if the unemployed worker is later found ineligible or disqualified. Please provide the following additional information

First day worked: 2-16-10 Last day worked: n/a Date removed from payroll: n/a  
Your Name and Title (please print): Nancy Laird  
Your signature: Nancy Laird Date: 7-16-10  
Phone: (506) 979-4110



Visit us on the Internet at [www.michigan.gov/ua](http://www.michigan.gov/ua)  
DELEG is an Equal Opportunity Employer/Program.



RECEIVED by MSC 9/9/2020 8:16:51 PM



EXHIBIT 2  
Request for Information

011116F02104011640052200

UIA 1707a  
(Rev. 1-09)State of Michigan  
Department of Energy, Labor & Economic Growth  
UNEMPLOYMENT INSURANCE AGENCY  
www.michigan.gov/uiaAuthorized by  
MCL 421.1, et seq.**REQUEST FOR INFORMATION RELATIVE TO POSSIBLE  
INELIGIBILITY OR DISQUALIFICATION**See "For Employers"  
at bottom of reverse  
side for non-  
compliance penalty.Office: L0035

## ADDRESSEE

Frank Lucente  
PO BOX 3083  
Center Line, MI 48015

Mail Date: 07/07/10

## RETURN FORM TO:

Unemployment Insurance Agency  
P.O. Box 189  
Grand Rapids, MI 49501-0169  
Fax Number: 1-617-838-0427Inquiry Line: 1-888-500-0017  
TTY Customers Use: 1-888-388-0004Unemployed Worker's Name:  
Frank LucenteSSN: ~~4637~~  
Benefit Year Beginning: 07/27/08Employer Name: DART PROPERTIES II LLC  
Account Number: 1562346000

You are involved in a claim for unemployment benefits, either as the employer or as the unemployed worker. The Unemployment Insurance Agency (UIA) needs the information below in order to make a determination on eligibility or qualification for benefits.

Please answer all the questions below. If additional space is needed, enter your answers on the back of this form or attach additional sheet(s) if necessary. If a question does not apply or you choose not to answer it, enter "n/a" (not applicable). In completing this form, provide in complete and specific detail all information you believe would be helpful to us. If a reply is not received by the UIA within 10 days of the Mail Date shown above, a (re)determination will be made on the basis of the available information. Mail or fax your answers to the return location indicated on the top of this form. You should keep a copy of the completed form for your records.

The Agency was notified that you were discharged for violation of company policy.

1. On what date were you fired?
2. Who fired you? Provide name and title.
3. What reason were you given for being fired?
4. Provide specific details of what you did to violate company policy.
5. On what date did the incident occur which caused you to be fired?
6. Did you receive any warnings, verbal or written, before you were fired? If yes, provide dates and reasons for warnings.

Continued on the next page

\* 0 1 7 0 0 9 0 1 \*

DELEG is an equal opportunity employer/program.

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Please use En-22 for mailing

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RECEIVED by MSC 9/9/2020 8:16:51 PM



U1A 1707  
(Rev. 1-63)  
Reverse Side

Unemployed Worker's Name: Frank Lucante  
SSN: ~~XXXXXXXX~~ 637  
Benefit Year Beginning: 07/27/02

Employer Name: DART PROPERTIES II LLC  
Employer Account Number: 1562346000

7. Were other employees discharged at the same time for the same reason? If yes, provide name(s).
8. When were you made aware of the policy?
9. Did you receive a copy of the company policy?
10. Provide any additional facts regarding this separation.

**UNEMPLOYED WORKER:** You are required to respond to this form within 10 days from the Mail Date on the front of this form.

Most recent occupation:

Full-Time ☐ Part-Time ☐ Work schedule

Your first day worked: \_\_\_\_\_ Last day worked: \_\_\_\_\_ Most recent wage: \_\_\_\_\_  
hourly ☐ weekly ☐

Your name (please print): \_\_\_\_\_ Phone: \_\_\_\_\_

Your signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FOR EMPLOYERS:** You are required to respond to this form within 10 days of the Mail Date on the front of this form whether you feel payment(s) on this claim should be allowed or denied. If you fail to respond timely, you will not receive credit for benefits paid prior to receipt of the information, even if the unemployed worker is later found ineligible or disqualified. Please provide the following additional information.

First day worked: \_\_\_\_\_ Last day worked: \_\_\_\_\_ Date removed from payroll: \_\_\_\_\_

**Your Name and Title (please print):** \_\_\_\_\_

Your Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Phone: \_\_\_\_\_

For U.S. Use Only: **Model No.** \_\_\_\_\_ **Serial No.** \_\_\_\_\_ **Date of Purchase** \_\_\_\_\_

011116F0210900W40052203

# EXHIBIT 3

## Notice of Redetermination



UIA 1302  
(Rev. 03-14)

Letter ID: L0024790738

### Protest Rights and Appeal Rights

Any protest or appeal must be filed by mail, fax or web account and received within 30 calendar days from the date this notice was issued on the front side of form. If the 30th day is a Saturday, Sunday, legal holiday, or Agency non-work day, the protest or appeal must be received by the Unemployment Insurance Agency (UIA) by the end of the next day which is neither a Saturday, Sunday, legal holiday, nor Agency non-work day. If a protest or appeal is not received within 30 days, a decision will become final and restitution may be due and owing.

#### If you disagree with a determination and want to protest:

- You may mail, fax or submit an online response to the following: UIA, PO Box 169, Grand Rapids MI 49501-0169, fax to: (517) 636-0427, or through your web account at [www.michigan.gov/uiu](http://www.michigan.gov/uiu).
- Protests must be signed or verified unless submitted through your online claim web account. However, the Agency may accept a protest that lacks a signature if the protest can be verified. The Agency will notify you.
- Attach copies of any documents, employer notices, correspondence, or other types of information that may clarify the issue you are protesting. Please retain the original documents for your files, as these documents will not be returned.
- All correspondence must have the claimant's name and Social Security Number, and the name of the employer (if applicable).
- If the 30-day protest period has already lapsed, your statement must indicate why your protest was not submitted on time.

#### If you disagree with a redetermination and want to appeal, request a hearing before an Administrative Law Judge:

- You may mail, fax, or submit an online response to the following: UIA, PO Box 124, Grand Rapids, MI 49501-0124, fax to: 1-616-356-0739, or through your web account at [www.michigan.gov/uiu](http://www.michigan.gov/uiu).
- All written appeals must be signed or verified. However, the Agency may accept an appeal that lacks a signature if the appeal can be verified. The Agency will notify you.

**IMPORTANT ADVOCACY INFORMATION:** After you appeal your redetermination to the Administrative Law Judge, an Advocate may be able to assist you at the hearing. This service is free to claimants and employers. If you are interested in using an Advocate, once you have received your Notice of Hearing, call the Advocacy Program at 1-800-838-3994 and press Option 2. Provide the Advocate Representative with the Appeal Number from your Notice of Hearing form. Some restrictions in service may apply.

**TO THE CLAIMANT:** If you protest or appeal, protect your rights by continuing to certify for benefits. Report using MARVIN, either by telephone or via the Internet at [www.michigan.gov/uiu](http://www.michigan.gov/uiu), and click on either heading, "UIA Online Services for Claimants", or "Certify With MARVIN Online" pending the redetermination or decision on your protest/appeal. If you go back to work, report this fact when you certify.

In accordance with the provisions of the 48, benefits (re)determined payable in accordance with this (re)determination will be paid, even though a protest may be filed at a later date. However, if a later redetermination or decision holds that you were not entitled to receive all or part of these benefits, you will be required to repay the benefits improperly received.

If you have any questions, call the UIA at 1-866-500-0017 (TTY callers use 1-866-356-0004).

**METHOD OF SATISFYING 13-WEEK AND 26-WEEK REQUALIFICATION:** Disqualifications imposed for a 13-week or 26-week requalification period will be terminated when you complete the required period. You will be credited with a week of requalification for each week in which you:

1. Certify as directed and meet the same requirements that apply to claiming a benefit payment, or
2. Earn at least 1/13th of the minimum high quarter earnings required to establish a benefit year, rounded down to a full dollar amount. For a benefit year beginning 1/4/2009 and after, the amount is \$220.00.

To re-qualify by certifying, you must report using MARVIN, either by telephone OR via the Internet at [www.michigan.gov/uiu](http://www.michigan.gov/uiu), and click on either heading "UIA Online Services for Claimants" or "Certify With MARVIN Online."



TIA is an Equal Opportunity Employer/Program.



UIA 1302  
(Rev. 03-14)

Letter ID: L0024780738

**METHOD OF SATISFYING A REWORK REQUIREMENT:** A disqualification imposed for a voluntary quit can be terminated after you have worked and earned an amount equal to, or greater than, 12 times your weekly benefit amount. A disqualification imposed for a suspension or discharge for misconduct can be terminated after you have worked and earned an amount equal to, or greater than, 17 times your weekly benefit amount. The earnings must be with an employer liable under the 48 or the unemployment compensation law of another state.

**ELIGIBILITY FOR BENEFITS AFTER COMPLETION OF REQUALIFICATION OR REWORK:** After the requalification or rework requirements are completed, the claimant may be eligible for benefits. If wages earned with the employer involved in the (re)determination fall within the base period of the claim, benefits may be paid to the claimant on the basis of such wages. However, if the requalification requirements are imposed due to a separation under Section 29(1)(h),(i),(j),(k), or (m) of the MES Act, the claimant is not entitled to benefits based on wages earned with the involved employer before the week of disqualification.

**INTEREST:** Interest accrues at the rate of 1% per month (computed on a daily basis), Section 15(a) of the MES Act.

**PENALTIES:** If it is determined that you intentionally made a false statement, misrepresented the facts or concealed material information to obtain benefits, then the penalty provisions of Sections 54 and 62(b) of the Michigan Employment Security Act will be applied and you will be subject to any or all of the following: You would have to repay money received and pay a penalty of two times (if less than \$500 of improper payments) or four times (if \$500 or more of improper payments) the amount of benefits fraudulently received. The two times penalty would be increased to a penalty of 4 times the amount of improper payments if it were a second or subsequent offense. Your benefits will be stopped and you will lose remaining benefits. You will be required to pay court costs (if prosecuted) and fines, face jail time, or you may be required to perform community service, or all of these. Intentional misrepresentation to obtain benefits in excess of \$3,500 is a felony and you may be prosecuted in criminal court.

This is a summary of a previously-mailed (re)determination for which there were protest/appeal rights and is being provided for informational purposes only.

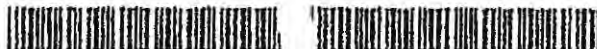
This document is not subject to protest/appeal.

#### AGENCY STATEMENT OF REPRODUCTION OF CONTENT OF ORIGINAL (RE)DETERMINATIONS AND RECONSIDERATIONS

Effective October 1, 2013, the Unemployment Insurance Agency (Agency) converted from its old main frame system, known as 3270, to a new computer based system known as MIDAS (Michigan Integrated Data Automated System).

With the implementation of the new system, the Agency no longer has access to and is unable to reprint actual copies of certain determinations, redeterminations and reconsiderations involving claims for benefits that were originally generated in 3270. However, the exact information, including original mail date printed on the determination, redetermination, and reconsideration, used to generate the document was converted in the new system. Because that original information is stored in the system, for purposes of a hearing resulting from an appeal and/or collection purposes, the Agency is able to recreate a determination, redetermination or reconsideration duplicating the exact information, including original mail date shown on the original document.

For purposes of hearings on appeals and collections, where the original determination, redetermination or reconsideration was issued prior to October 1, 2013, the Agency certifies that the recreated document generated in MIDAS is a true and accurate reproduction of the original document upon which the protest or appeal was filed or which had become final.



TIA is an Equal Opportunity Employer/Program.

This claimant also has the following mail serve dates:

Mail Serve Dates

30-Nov-2010

01-Dec-2010

011116F02119021640052207



011116F02108831540052208

EXHIBIT 4  
Notice of Redetermination

UIA 1302  
(Rev. 03-14)

Letter ID: L0024991508

### Protest Rights and Appeal Rights

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#### If you disagree with a determination and want to protest:

- You may mail, fax or submit an online response to the following: UIA, PO Box 169, Grand Rapids MI 49501-0169, fax to: (517) 638-0427, or through your web account at [www.michigan.gov/uia](http://www.michigan.gov/uia).
- Protests must be signed or verified unless submitted through your online claim web account. However, the Agency may accept a protest that lacks a signature if the protest can be verified. The Agency will notify you.
- Attach copies of any documents, employer notices, correspondence, or other types of information that may clarify the issue you are protesting. Please retain the original documents for your files, as these documents will not be returned.
- All correspondence must have the claimant's name and Social Security Number, and the name of the employer (if applicable).
- If the 30-day protest period has already lapsed, your statement must indicate why your protest was not submitted on time.

#### If you disagree with a redetermination and want to appeal, request a hearing before an Administrative Law Judge:

- You may mail, fax, or submit an online response to the following: UIA, PO Box 124, Grand Rapids, MI 49501-0124, fax to: 1-616-356-0739, or through your web account at [www.michigan.gov/uia](http://www.michigan.gov/uia).
- All written appeals must be signed or verified. However, the Agency may accept an appeal that lacks a signature if the appeal can be verified. The Agency will notify you.

**IMPORTANT ADVOCACY INFORMATION:** After you appeal your redetermination to the Administrative Law Judge, an Advocate may be able to assist you at the hearing. This service is free to claimants and employers. If you are interested in using an Advocate, once you have received your Notice of Hearing, call the Advocacy Program at 1-800-638-3994 and press Option 2. Provide the Advocate Representative with the Appeal Number from your Notice of Hearing form. Some restrictions in service may apply.

**TO THE CLAIMANT:** If you protest or appeal, protect your rights by continuing to certify for benefits. Report using MARVIN, either by telephone or via the Internet at [www.michigan.gov/uia](http://www.michigan.gov/uia), and click on either heading, "UIA Online Services for Claimants", or "Certify With MARVIN Online" pending the redetermination or decision on your protest/appeal. If you go back to work, report this fact when you certify.

In accordance with the provisions of the 54B, 62B, benefits (re)determined payable in accordance with this (re)determination will be paid, even though a protest may be filed at a later date. However, if a later redetermination or decision holds that you were not entitled to receive all or part of these benefits, you will be required to repay the benefits improperly received.

If you have any questions, call the UIA at 1-866-500-0017 (TTY callers use 1-866-366-0004).

**METHOD OF SATISFYING 13-WEEK AND 26-WEEK REQUALIFICATION:** Disqualifications imposed for a 13-week or 26-week requalification period will be terminated when you complete the required period. You will be credited with a week of requalification for each week in which you:

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To re-qualify by certifying, you must report using MARVIN, either by telephone OR via the Internet at [www.michigan.gov/uia](http://www.michigan.gov/uia), and click on either heading "UIA Online Services for Claimants" or "Certify With MARVIN Online."



TIA is an Equal Opportunity Employer/Program.

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UIA 1302  
(Rev. 03-14)

Letter ID: L0024991508

**METHOD OF SATISFYING A REWORK REQUIREMENT:** A disqualification imposed for a voluntary quit can be terminated after you have worked and earned an amount equal to, or greater than, 12 times your weekly benefit amount. A disqualification imposed for a suspension or discharge for misconduct can be terminated after you have worked and earned an amount equal to, or greater than, 17 times your weekly benefit amount. The earnings must be with an employer liable under the 54B, 62B or the unemployment compensation law of another state.

**ELIGIBILITY FOR BENEFITS AFTER COMPLETION OF REQUALIFICATION OR REWORK:** After the requalification or rework requirements are completed, the claimant may be eligible for benefits. If wages earned with the employer involved in the (re)determination fall within the base period of the claim, benefits may be paid to the claimant on the basis of such wages. However, if the requalification requirements are imposed due to a separation under Section 29(1)(h),(i),(j),(k), or (m) of the MES Act, the claimant is not entitled to benefits based on wages earned with the involved employer before the week of disqualification.

**INTEREST:** Interest accrues at the rate of 1% per month (computed on a daily basis), Section 15(a) of the MES Act.

**PENALTIES:** If it is determined that you intentionally made a false statement, misrepresented the facts or concealed material information to obtain benefits, then the penalty provisions of Sections 54 and 62(b) of the Michigan Employment Security Act will be applied and you will be subject to any or all of the following: You would have to repay money received and pay a penalty of two times (if less than \$500 of improper payments) or four times (if \$500 or more of improper payments) the amount of benefits fraudulently received. The two times penalty would be increased to a penalty of 4 times the amount of improper payments if it were a second or subsequent offense. Your benefits will be stopped and you will lose remaining benefits. You will be required to pay court costs (if prosecuted) and fines, face jail time, or you may be required to perform community service, or all of these. Intentional misrepresentation to obtain benefits in excess of \$3,500 is a felony and you may be prosecuted in criminal court.

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This document is not subject to protest/appeal.

#### AGENCY STATEMENT OF REPRODUCTION OF CONTENT OF ORIGINAL (RE)DETERMINATIONS AND RECONSIDERATIONS

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TIA is an Equal Opportunity Employer/Program.

RECEIVED by MSC 9/9/2020 8:16:51 PM

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EXHIBIT 5  
Non-Protestable Summary of (Re) Determined  
Restitution



UJA 1301  
(Rev. 04-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Talent Investment Agency  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/uita



Authorized By  
MCL 421.1 et seq.  
Sharon Moffatt-Maasey  
DIRECTOR

FRANK LUCENTE  
17371 KINGSBROOKE CIR APT 102  
CLINTON TOWNSHIP MI 48038-3758

Mail Date: November 23, 2015  
Letter ID: L0024868627  
MIN: 0337484032  
Name: FRANK LUCENTE

### Non-Protestable Summary of Previously (Re) Determined Restitution (List of Overpayments)

SSN: ~~###-##-4837~~ BYB: July 27, 2008  
Claimant: FRANK LUCENTE Employer Number: 1562346 000  
Original Mail Date: December 01, 2010 Employer Name: DART PROPERTIES II LLC

Should your disqualification or ineligibility be reversed, restitution shall cease if you are not otherwise disqualified or ineligible for unemployment benefits.

Week Ending	Principal	Program	Total
20-Feb-2010	\$382.00	EUC3	\$382.00
20-Feb-2010	\$25.00	FAC	\$25.00
27-Feb-2010	\$382.00	EUC3	\$382.00
27-Feb-2010	\$25.00	FAC	\$25.00
08-Mar-2010	\$382.00	EUC3	\$382.00
06-Mar-2010	\$25.00	FAC	\$25.00
13-Mar-2010	\$382.00	EUC3	\$382.00
13-Mar-2010	\$25.00	FAC	\$25.00
20-Mar-2010	\$382.00	EUC3	\$382.00
20-Mar-2010	\$25.00	FAC	\$25.00
27-Mar-2010	\$382.00	EUC3	\$382.00
27-Mar-2010	\$25.00	FAC	\$25.00
03-Apr-2010	\$382.00	EUC3	\$382.00
03-Apr-2010	\$25.00	FAC	\$25.00
10-Apr-2010	\$382.00	EUC3	\$382.00
10-Apr-2010	\$25.00	FAC	\$25.00
17-Apr-2010	\$382.00	EUC3	\$382.00
17-Apr-2010	\$25.00	FAC	\$25.00
24-Apr-2010	\$382.00	EUC3	\$382.00
24-Apr-2010	\$25.00	FAC	\$25.00



TIA is an Equal Opportunity Employer/Program.

UIA 1301  
(Rev. 04-14)

Letter ID: L0024868627

Week Ending	Principal	Program	Total
01-May-2010	\$362.00	EUC3	\$362.00
01-May-2010	\$25.00	FAC	\$25.00
08-May-2010	\$362.00	EUC3	\$362.00
08-May-2010	\$25.00	FAC	\$25.00
15-May-2010	\$25.00	FAC	\$25.00
22-May-2010	\$25.00	FAC	\$25.00
29-May-2010	\$25.00	FAC	\$25.00
05-Jun-2010	\$25.00	FAC	\$25.00
12-Jun-2010	\$25.00	FAC	\$25.00
19-Jun-2010	\$25.00	FAC	\$25.00
	<u>\$4,794.00</u>		<u>\$4,794.00</u>
Penalty	\$18,276.00		<u>\$18,276.00</u>
			<u>\$23,070.00</u>

Claimant must pay to the Agency in cash, by check, money order, EFT via MIWAM or deduction from benefits, restitution as noted above under MES Act, Section 62(a).

Reason for overpayment does not come within the criteria for waiver. If you are unable to repay the balance owed due to indigency, you may request, or reapply for, a waiver due to your financial status at any time via fax at (517) 636-0427, mail at UIA, PO Box 169, Grand Rapids MI 49501-0169, or your MIWAM account.

Repayment arrangements should be made with the Benefit Overpayment Collection (BOC) Unit. For information on repayment or repayment arrangements, contact BOC at 1-800-638-6372 from 9:00 a.m. to 3:00 p.m. Eastern Time Monday through Friday. Checks or money orders must be made payable to the "State of Michigan for UIA." Submit the check or money order with the payment voucher that will be attached to the monthly statement. The address is: State of Michigan, Unemployment Insurance Agency - Restitution, Dept #771760, PO Box 77000 Detroit, MI 48277-1760. DO NOT SEND CASH. You may also make restitution payments through your MIWAM account by setting up electronic funds transfer (EFT) payments.



TIA is an Equal Opportunity Employer/Program.



UIA 1301  
(Rev. 04-14)

Letter ID: L0024868627

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This document is not subject to protest/appeal.

#### AGENCY STATEMENT OF REPRODUCTION OF CONTENT OF ORIGINAL (RE)DETERMINATIONS AND RECONSIDERATIONS

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For purposes of hearings on appeals and collections, where the original determination, redetermination or reconsideration was issued prior to October 1, 2013, the Agency certifies that the recreated document generated in MIDAS is a true and accurate reproduction of the original document upon which the protest or appeal was filed or which had become final.



TIA is an Equal Opportunity Employer/Program.

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# EXHIBIT 6

## Wage Garnishment Request



UIA 1141  
(Rev. 01-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Department of Licensing and Regulatory Affairs  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/uia



Authorized By  
HCL 421.1 et seq.  
Shawn Thomas  
DIRECTOR

15326

VENSURE HR INC  
4140 E BASELINE RD STE 201  
MESA AZ 85208-4414

APR 17 2014

Mail Date: April 3, 2014  
Letter ID: L0009649905  
FEIN: 200465784  
Name: VENSURE HR INC

### Wage Garnishment Request

FRANK LUCENTE [REDACTED] has overpayment debt with the State of Michigan, Unemployment Insurance Agency (UIA). We have been informed that they are currently working for you. Please answer the questions below regarding their employment status with you. This completed form must be received by UIA within 10 calendar days of the mail date shown.

#### CURRENT EMPLOYMENT STATUS:

- Is the debtor named above currently employed by you? ☒ Yes ☐ No
- Please indicate the debtor's pay cycle: ☒ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other
- If the debtor is not currently employed by you, did or were they:
  - ☐ Laid Off ☐ Terminated ☐ Quit ☐ Never Employed by you?
- If the debtor was laid off, on what date is the debtor expected to return to work? \_\_\_\_\_
- If the debtor was terminated or quit, on what date did the separation occur? \_\_\_\_\_
- If terminated or quit, is the debtor currently employed elsewhere? ☐ Yes ☐ No ☐ Unknown
- If employed elsewhere, provide the name and address of the current employer, if known \_\_\_\_\_

Please return this form to the address shown below. If the debtor is not currently employed by you, do not complete the back of this form.

Benefit Enforcement Unit  
PO Box 189  
Grand Rapids MI 49501-0169  
Phone number: (313) 456-1360 from 9:00 a.m. to 3:00 p.m. Monday through Friday  
Fax: 517-836-0427  
BEU@Michigan.Gov

#### WAGE GARNISHMENT ORDER

THIS ORDER OF WAGE GARNISHMENT ISSUED BY THE STATE OF MICHIGAN, UNEMPLOYMENT INSURANCE AGENCY, UNDER THE AUTHORITY OF THE MICHIGAN COMPILED LAWS (MCL), SECTIONS 421.15(m)(3) AND 421.15(n) REQUIRES THE EMPLOYER OF THE NAMED DEBTOR TO DO THE FOLLOWING: This debtor is subject to Wage Garnishment Request which means that you will be required to complete a worksheet and submit payment of up to 25% to the State of Michigan Unemployment Insurance Agency (UIA) each pay period. You will receive a monthly voucher and worksheet to remit payment. You will complete the worksheet for each pay period to the UIA that represents the total of all the payment withheld from the debtor's paycheck(s). Each month's payment must be submitted to the UIA as long as you employ the debtor, or until you are notified by the UIA to suspend or discontinue deductions because the debt has been satisfied. During this process, if the claimant becomes unemployed from your company, please notify the UIA of this change in employment status either in writing or by phone. You may contact the Benefit Enforcement Unit at (313) 456-1360.

LARA is an Equal Opportunity Employer/Program.

Page 1 of 2 0000481

UA 1141  
(Rev. 01-14)

Letter ID: L0009649905

## CERTIFICATION

I certify that I am the Employer, or authorized by the Employer, to complete this Wage Garnishment process and that I have answered completely and correctly to the best of my knowledge and belief. I understand that MCL 421.54(a) provides penalties for intentional failure to comply with the Wage Garnishment process provided under MCL 421.15 (n) of up to three times the amount involved, and/or community service, and/or imprisonment.

  
Signature of Employer or DesigneeTammy O'Keefe  
Print NameVersure HR Inc  
Business Name4-23-14  
Date480-493-2650  
Telephone

LAPA is an Equal Opportunity Employer/Program.

Page 2 of 2 0000482



EXHIBIT 7

Notice (s) of Payment Due

011116F0214003B40052219

UIA 1089  
(Rev. 01/12)State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/uia](http://www.michigan.gov/uia)Authorized by  
MCL 421.1 et seq.FRANK . LUCENTE  
23630 DENTON ST 129  
CLINTON TOWNSHIP, MI. 48035-Statement Date :  
SSN :02/24/2012  
637Si  
He

## NOTICE OF PAYMENT DUE

Current Overpayment Balance:	\$6,986.00
Interest Balance as of 02/24/2012:	\$0.00
Current Penalty Balance:	\$26,984.00
Minimum Monthly Payment Due:	\$125.00

You received a determination from the Unemployment Insurance Agency (UIA) that you were overpaid unemployment benefits. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the current overpayment, interest, and penalty balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

Your Michigan State Income Tax Refund, as provided by MCL § 421.62(a), will be intercepted by the UIA and used as payment toward the amount you owe if payment in full is not made on your account. Your Federal Income Tax Refund, as provided by 26 U.S.C. 6402(f), will be intercepted by the UIA for overpayment of unemployment benefits due to intentional misrepresentation or unreported earnings if payment in full is not made on your account. The current overpayment, current interest, and current penalty balances must be paid in full to avoid having the UIA intercept your tax refund(s). Paying the minimum monthly payment will not stop your income tax refund(s) from being intercepted by the UIA. In addition, if you are currently receiving unemployment benefits and overpayment deductions are being withheld from your payments by the UIA, your income tax refund(s) will still be intercepted by the UIA to pay off your balance(s).

Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:

BENEFIT OVERPAYMENT COLLECTION UNIT  
P.O. BOX 9045

DETROIT, MI 48202-9045

Telephone: 1-800-638-6372 (TTY customers use 1-866-366-0004)  
from 9:00 AM to 3:30 PM Eastern TimeUNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNIT  
PAYMENT COUPONSSN: ~~637~~  
Name: FRANK . LUCENTE  
Statement Date: 02/24/2012  
Records Office: 023

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

If your address has changed, check here ☐ and provide new address:Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Zip/Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

LARA IS AN EQUAL OPPORTUNITY EMPLOYER PROGRAM



UIA 1088  
(Rev. 01/12)

State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/uia](http://www.michigan.gov/uia)

Authorized by  
MCL 421.1 et seq.

FRANK, LUCENTE  
23630 DENTON ST 129  
CLINTON TOWNSHIP, MI, 48035-

Statement Date :  
SSN :

03/27/2012  
~~4537~~

## NOTICE OF PAYMENT DUE

Current Overpayment Balance:	\$6,966.00
Interest Balance as of 03/27/2012:	\$0.00
Current Penalty Balance:	\$26,964.00
Minimum Monthly Payment Due:	\$250.00

You received a determination from the Unemployment Insurance Agency (UIA) that you were overpaid unemployment benefits. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the current overpayment, interest, and penalty balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

Your Michigan State Income Tax Refund, as provided by MCL § 421.62(a), will be intercepted by the UIA and used as payment toward the amount you owe if payment in full is not made on your account. Your Federal Income Tax Refund, as provided by 26 U.S.C. 6402(f), will be intercepted by the UIA for overpayment of unemployment benefits due to intentional misrepresentation or unreported earnings if payment in full is not made on your account. The current overpayment, current interest, and current penalty balances must be paid in full to avoid having the UIA intercept your tax refund(s). Paying the minimum monthly payment will not stop your income tax refund(s) from being intercepted by the UIA. In addition, if you are currently receiving unemployment benefits and overpayment deductions are being withheld from your payments by the UIA, your income tax refund(s) will still be intercepted by the UIA to pay off your balance(s).

Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:



BENEFIT OVERPAYMENT COLLECTION UNIT  
P.O. BOX 9045

DETROIT, MI 48202-9045

Telephone: 1-800-638-8372 (TTY customers use 1-866-366-0004)  
from 9:00 AM to 3:30 PM Eastern Time



UNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNIT  
PAYMENT COUPON

SSN: ~~4537~~  
Name: FRANK, LUCENTE  
Statement Date: 03/27/2012  
Records Office: 023

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

If your address has changed, check here ☐ and provide new address:

Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Zip/Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

LARA IS AN EQUAL OPPORTUNITY EMPLOYER/PROGRAM

19 35 of 38

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**EXHIBIT 8**  
**Second Notice of Payment Due**  
**Final Notice of Payment Due**



UIA 1085  
(Rev. 01/12)

State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/uia](http://www.michigan.gov/uia)

Authorized by  
MCL 421.1 et seq.

FRANK . LUCENTE  
PO BOX 3083  
CENTER LINE, MI. 48015-0053

Statement Date :  
SSN :

04/24/2012  
[REDACTED] 637

Si  
HE

## SECOND NOTICE OF PAYMENT DUE

Current Overpayment Balance:	\$5,966.00
Interest Balance as of 04/24/2012:	\$0.00
Current Penalty Balance:	\$26,964.00
Minimum Monthly Payment Due:	\$250.00

You failed to pay the minimum monthly payment due last month. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the above balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

Your Michigan State Income Tax Refund, as provided by MCL § 421.62(a), will be intercepted by the UIA and used as payment toward the amount you owe if payment in full is not made on your account. Your Federal Income Tax Refund, as provided by 26 U.S.C. 6402(f), will be intercepted by the UIA for overpayment of unemployment benefits due to intentional misrepresentation or unreported earnings if payment in full is not made on your account. The current overpayment, interest, and penalty balances must be paid in full to avoid having the UIA intercept your tax refund(s). Paying the minimum monthly payment will not stop your income tax refund(s) from being intercepted by the UIA. In addition, if you are currently receiving unemployment benefits and overpayment deductions are being withheld from your payments by the UIA, your income tax refund(s) will still be intercepted by the UIA to pay off your balance(s).

Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:



BENEFIT OVERPAYMENT COLLECTION UNIT  
P.O. BOX 9045  
DETROIT, MI 48202-9045

Telephone: 1-800-638-6372 (TTY customers use 1-866-366-0004)  
from 9:00 AM to 3:30 PM Eastern Time



UNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNIT  
PAYMENT COUPON

SSN: [REDACTED] 637  
Name: FRANK . LUCENTE  
Statement Date: 04/24/2012  
Records Office: 023

If your address has changed, check here ☐ and provide new address:  
Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Zip/Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

LARA IS AN EQUAL OPPORTUNITY EMPLOYER PROGRAM

Pg 37 of 38



UIA 1083  
(Rev. 04/12)State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/ua](http://www.michigan.gov/ua)Authorized by  
MCL 421.1 et seq.FRANK LUCENTE  
PO BOX 3083  
CENTER LINE, MI 48015-0083Statement Date :  
SSN :05/24/2012  
4637SI  
He

## FINAL NOTICE OF PAYMENT DUE

Current Overpayment Balance:	\$6,966.00
Interest Balance as of 05/24/2012:	\$0.00
Current Penalty Balance:	\$26,964.00
Minimum Monthly Payment Due:	\$375.00

You failed to pay the minimum monthly payment due last month. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the above balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

Your Michigan State Income Tax Refund, as provided by MCL § 421.62(e), will be intercepted by the UIA and used as payment toward the amount you owe if payment in full is not made on your account. Your Federal Income Tax Refund, as provided by 26 U.S.C. 6402(f), will be intercepted by the UIA for overpayment of unemployment benefits due to intentional misrepresentation or unreported earnings if payment in full is not made on your account. The current overpayment, interest, and penalty balances must be paid in full to avoid having the UIA intercept your tax refund(s). Paying the minimum monthly payment will not stop your income tax refund(s) from being intercepted by the UIA. In addition, if you are currently receiving unemployment benefits and overpayment deductions are being withheld from your payments by the UIA, your income tax refund(s) will still be intercepted by the UIA to pay off your balance(s).

Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:



## BENEFIT OVERPAYMENT COLLECTION UNIT

P.O. BOX 9045

DETROIT, MI 48202-9045

Telephone: 1-800-638-6372 (TTY customers use 1-866-366-0004)  
from 9:00 AM to 3:30 PM Eastern TimeUNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNIT

## PAYMENT COUPON

Prefer to pay on line?  
At [www.michigan.gov/ua](http://www.michigan.gov/ua), click on Online Services

SSN: ~~4637~~  
Name: FRANK LUCENTE  
Statement Date: 05/24/2012  
Records Office: 023

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

If your address has changed, check here ☐ and provide new address:

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

LARA IS AN EQUAL OPPORTUNITY EMPLOYER PROGRAM





FRANK LUCENTE  
17371 KINGSBROOKE CIR APT 102  
CLINTON TOWNSHIP MI 48038-3758

Mail Date: January 19, 2016  
Letter ID: L0026867875  
CLM: C3366085-4  
Name: FRANK LUCENTE

Claimant: FRANK LUCENTE  
SSN: [REDACTED]

### DENIAL OF REQUEST FOR RECONSIDERATION OR REDETERMINATION

You recently protested/appealed a determination that was issued more than one year ago. Your protest/appeal was received on January 11, 2016 and the (re)determination was mailed on December 01, 2010.

In accordance with Section 32a(2) of the MES Act, whenever a request for redetermination or reconsideration is not received within one year from the date of mailing of the original determination, the Unemployment Insurance Agency (UIA) cannot reconsider the disputed issue. For this reason, your request for redetermination or reconsideration is denied, as it was not filed within the statutory time limitation.

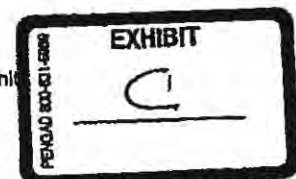
If you do not agree with this notice of denial of request for a redetermination or reconsideration, you may file an appeal for a hearing before an Administrative Law Judge by submitting your request through your MiWAM account, by mail or fax. Any protest or appeal must be submitted in writing to the UIA within 30 calendar days from the date of this mailing. If the 30th day is a Saturday, Sunday, legal holiday, or Agency non-work day, the protest or appeal must be received by the Unemployment Insurance Agency by the next day which is neither a Saturday, Sunday, legal holiday, or Agency non-work day.

If you have any questions regarding this letter, contact the Inquiry Line at 1-866-500-0017, from 8 a.m. to 4:30 p.m. Monday through Friday. (TTY customers use 1-866-366-0004).

Mail or fax your appeal to:  
State of Michigan  
Unemployment Insurance Agency  
PO Box 124  
Grand Rapids MI 49501-0124  
Fax# (616) 356-0739



TIA is an Equal Opportunity







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FRANK LUCENTE  
17371 KINGSBROOKE CIR APT 102  
CLINTON TOWNSHIP MI 48038-3758

Mail Date: January 19, 2016  
Letter ID: L0026867876  
CLM: C3366085-4  
Name: FRANK LUCENTE

Claimant: FRANK LUCENTE  
SSN: [REDACTED]

### DENIAL OF REQUEST FOR RECONSIDERATION OR REDETERMINATION

You recently protested/appealed a determination that was issued more than one year ago. Your protest/appeal was received on January 11, 2016 and the (re)determination was mailed on December 01, 2010.

In accordance with Section 32a(2) of the MES Act, whenever a request for redetermination or reconsideration is not received within one year from the date of mailing of the original determination, the Unemployment Insurance Agency (UIA) cannot reconsider the disputed issue. For this reason, your request for redetermination or reconsideration is denied, as it was not filed within the statutory time limitation.

If you do not agree with this notice of denial of request for a redetermination or reconsideration, you may file an appeal for a hearing before an Administrative Law Judge by submitting your request through your MiWAM account, by mail or fax. Any protest or appeal must be submitted in writing to the UIA within 30 calendar days from the date of this mailing. If the 30th day is a Saturday, Sunday, legal holiday, or Agency non-work day, the protest or appeal must be received by the Unemployment Insurance Agency by the next day which is neither a Saturday, Sunday, legal holiday, or Agency non-work day.

If you have any questions regarding this letter, contact the Inquiry Line at 1-866-500-0017, from 8 a.m. to 4:30 p.m. Monday through Friday. (TTY customers use 1-866-366-0004).

Mail or fax your appeal to:  
State of Michigan  
Unemployment Insurance Agency  
PO Box 124  
Grand Rapids MI 49501-0124  
Fax# (616) 356-0739



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UJA 1302  
(Rev. 03-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Talent Investment Agency  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
[www.michigan.gov/ua](http://www.michigan.gov/ua)



Authorized By  
MCL 421.1 et seq.  
Sharon Moffett-Messay  
DIRECTOR

FRANK LUCENTE  
17371 KINGSBROOKE CIR APT 102  
CLINTON TOWNSHIP MI 48038-3758

Mail Date: November 23, 2015  
Letter ID: L0024780738  
MIN: 0337484032  
Name: FRANK LUCENTE

## Notice of Redetermination

SSN: ###-##-4837	BYB: July 08, 2008
Claimant: FRANK LUCENTE	Employer Number: 1562348 000
Original Mail Date: January 01, 2010	Employer Name: DART PROPERTIES II LLC

**Section(s) of Michigan Employment Security Act involved: 48.**

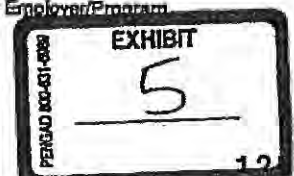
YOU WORKED FULL-TIME FOR DART PROPERTIES II LLC BEGINNING 2/18/10. AS SUCH, YOU ARE INELIGIBLE FOR BENEFITS UNDER SECTION 48 OF THE MES ACT. YOU WERE PAID, SO RESTITUTION IS REQUIRED, AS SHOWN, UNDER SECTION 62 OF THE ACT.

**You are ineligible for benefits under 48 of the Michigan Employment Security Act.**

If you disagree with this (re)determination, refer to "Protest Rights and Appeal Rights" on the reverse side of this form.



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UIA 1382  
(Rev. 03-14)

Letter ID: L0024780738

### Protest Rights and Appeal Rights

Any protest or appeal must be filed by mail, fax or web account and received within 30 calendar days from the date this notice was issued on the front side of form. If the 30th day is a Saturday, Sunday, legal holiday, or Agency non-work day, the protest or appeal must be received by the Unemployment Insurance Agency (UIA) by the end of the next day which is neither a Saturday, Sunday, legal holiday, nor Agency non-work day. If a protest or appeal is not received within 30 days, a decision will become final and restitution may be due and owing.

If you disagree with a determination and want to protest:

- You may mail, fax or submit an online response to the following: UIA, PO Box 169, Grand Rapids MI 49501-0169, fax to: (517) 638-0427, or through your web account at [www.michigan.gov/uia](http://www.michigan.gov/uia).
- Protests must be signed or verified unless submitted through your online claim web account. However, the Agency may accept a protest that lacks a signature if the protest can be verified. The Agency will notify you.
- Attach copies of any documents, employer notices, correspondence, or other types of information that may clarify the issue you are protesting. Please retain the original documents for your files, as these documents will not be returned.
- All correspondence must have the claimant's name and Social Security Number, and the name of the employer (if applicable).
- If the 30-day protest period has already lapsed, your statement must indicate why your protest was not submitted on time.

If you disagree with a redetermination and want to appeal, request a hearing before an Administrative Law Judge:

- You may mail, fax, or submit an online response to the following: UIA, PO Box 124, Grand Rapids, MI 49501-0124, fax to: 1-816-358-0739, or through your web account at [www.michigan.gov/uia](http://www.michigan.gov/uia).
- All written appeals must be signed or verified. However, the Agency may accept an appeal that lacks a signature if the appeal can be verified. The Agency will notify you.

**IMPORTANT ADVOCACY INFORMATION:** After you appeal your redetermination to the Administrative Law Judge, an Advocate may be able to assist you at the hearing. This service is free to claimants and employers. If you are interested in using an Advocate, once you have received your Notice of Hearing, call the Advocacy Program at 1-800-638-3884 and press Option 2. Provide the Advocate Representative with the Appeal Number from your Notice of Hearing form. Some restrictions in service may apply.

**TO THE CLAIMANT:** If you protest or appeal, protect your rights by continuing to certify for benefits. Report using MARVIN, either by telephone or via the Internet at [www.michigan.gov/uia](http://www.michigan.gov/uia), and click on either heading, "UIA Online Services for Claimants", or "Certify With MARVIN Online" pending the redetermination or decision on your protest/appeal. If you go back to work, report this fact when you certify.

In accordance with the provisions of the 48, benefits (re)determined payable in accordance with this (re) determination will be paid, even though a protest may be filed at a later date. However, if a later redetermination or decision holds that you were not entitled to receive all or part of these benefits, you will be required to repay the benefits improperly received.

If you have any questions, call the UIA at 1-866-500-0017 (TTY callers use 1-866-388-0004).

**METHOD OF SATISFYING 13-WEEK AND 26-WEEK REQUALIFICATION:** Disqualifications imposed for a 13-week or 26-week requalification period will be terminated when you complete the required period. You will be credited with a week of requalification for each week in which you:

1. Certify as directed and meet the same requirements that apply to claiming a benefit payment, or
2. Earn at least 1/13th of the minimum high quarter earnings required to establish a benefit year, rounded down to a full dollar amount. For a benefit year beginning 1/4/2009 and after, the amount is \$220.00.

To re-qualify by certifying, you must report using MARVIN, either by telephone OR via the Internet at [www.michigan.gov/uia](http://www.michigan.gov/uia), and click on either heading "UIA Online Services for Claimants" or "Certify With MARVIN Online."



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Page 32 of 86 09/08/2020 05:32:38:30 PM [Eastern Daylight Time] From: 248-247-3310

pg 2 of 4



UIA 1302  
(Rev. 03-14)

Letter ID: L0024780738

**METHOD OF SATISFYING A REWORK REQUIREMENT:** A disqualification imposed for a voluntary quit can be terminated after you have worked and earned an amount equal to, or greater than, 12 times your weekly benefit amount. A disqualification imposed for a suspension or discharge for misconduct can be terminated after you have worked and earned an amount equal to, or greater than, 17 times your weekly benefit amount. The earnings must be with an employer liable under the 48 or the unemployment compensation law of another state.

**ELIGIBILITY FOR BENEFITS AFTER COMPLETION OF REQUALIFICATION OR REWORK:** After the requalification or rework requirements are completed, the claimant may be eligible for benefits. If wages earned with the employer involved in the (re)determination fall within the base period of the claim, benefits may be paid to the claimant on the basis of such wages. However, if the requalification requirements are imposed due to a separation under Section 29(1)(h), (i), (j), (k), or (m) of the MES Act, the claimant is not entitled to benefits based on wages earned with the involved employer before the week of disqualification.

**INTEREST:** Interest accrues at the rate of 1% per month (computed on a daily basis), Section 15(a) of the MES Act.

**PENALTIES:** If it is determined that you intentionally made a false statement, misrepresented the facts or concealed material information to obtain benefits, then the penalty provisions of Sections 64 and 62(b) of the Michigan Employment Security Act will be applied and you will be subject to any or all of the following: You would have to repay money received and pay a penalty of two times (if less than \$500 of improper payments) or four times (if \$500 or more of improper payments) the amount of benefits fraudulently received. The two times penalty would be increased to a penalty of 4 times the amount of improper payments if it were a second or subsequent offense. Your benefits will be stopped and you will lose remaining benefits. You will be required to pay court costs (if prosecuted) and fines, face jail time, or you may be required to perform community service, or all of these. Intentional misrepresentation to obtain benefits in excess of \$3,500 is a felony and you may be prosecuted in criminal court.

This is a summary of a previously-mailed (re)determination for which there were protest/appeal rights and is being provided for informational purposes only.

This document is not subject to protest/appeal.

#### AGENCY STATEMENT OF REPRODUCTION OF CONTENT OF ORIGINAL (RE)DETERMINATIONS AND RECONSIDERATIONS

Effective October 1, 2013, the Unemployment Insurance Agency (Agency) converted from its old main frame system, known as 3270, to a new computer based system known as MIDAS (Michigan Integrated Data Automated System).

With the implementation of the new system, the Agency no longer has access to and is unable to reprint actual copies of certain determinations, redeterminations and reconsiderations involving claims for benefits that were originally generated in 3270. However, the exact information, including original mail date printed on the determination, redetermination, and reconsideration, used to generate the document was converted in the new system. Because that original information is stored in the system, for purposes of a hearing resulting from an appeal and/or collection purposes, the Agency is able to recreate a determination, redetermination or reconsideration duplicating the exact information, including original mail date shown on the original document.

For purposes of hearings on appeals and collections, where the original determination, redetermination or reconsideration was issued prior to October 1, 2013, the Agency certifies that the recreated document generated in MIDAS is a true and accurate reproduction of the original document upon which the protest or appeal was filed or which had become final.



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Page 33 of 66 [08/08/2018 3:30 PM Eastern Daylight Time] From: 248-247-3310

19 304

This claimant also has the following mail serve dates:

Mail Serve Dates

30-Nov-2010

01-Dec-2010



UJA 1302  
(Rev. 03-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Talent Investment Agency  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/tia



Authorized By  
MCL 421.1 et seq.  
Sharon Moffatt-Massey  
DIRECTOR

FRANK LUCENTE  
17371 KINGSBROOKE CIR APT 102  
CLINTON TOWNSHIP MI 48038-3758

Mail Date: November 23, 2015  
Letter ID: L0024991508  
MIN: 0337484032  
Name: FRANK LUCENTE

### Notice of Redetermination

SSN:	###-##-4637	BYB:	July 27, 2008
Claimant:	FRANK LUCENTE	Employer Number:	1582348 000
Original Mail Date:	January 01, 2010	Employer Name:	DART PROPERTIES II LLC

Section(s) of Michigan Employment Security Act Involved: 54B, 62B.

YOUR ACTIONS ARE CONSIDERED TO HAVE BEEN INTENTIONAL BECAUSE:

YOU FAILED TO NOTIFY THIS AGENCY THAT YOU WERE WORKING FULL-TIME AND  
CONTINUED TO COLLECT BENEFITS FOR FOUR MORE MONTHS. YOU INTENTIONALLY  
WITHHELD INFORMATION TO OBTAIN BENEFITS. YOU ARE DISQUALIFIED UNDER  
SECTIONS 62(B) AND 54(B) OF THE MES ACT.

You are Disqualified for benefits under 54B, 62B of the Michigan Employment Security Act.

If you disagree with this (re)determination, refer to "Protest Rights and Appeal Rights" on the reverse side of this form.



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UIA 1302  
(Rev. 03-14)

Letter ID: L0024891508

### Protest Rights and Appeal Rights

Any protest or appeal must be filed by mail, fax or web account and received within 30 calendar days from the date this notice was issued on the front side of form. If the 30th day is a Saturday, Sunday, legal holiday, or Agency non-work day, the protest or appeal must be received by the Unemployment Insurance Agency (UIA) by the end of the next day which is neither a Saturday, Sunday, legal holiday, nor Agency non-work day. If a protest or appeal is not received within 30 days, a decision will become final and restitution may be due and owing.

**If you disagree with a determination and want to protest:**

- You may mail, fax or submit an online response to the following: UIA, PO Box 169, Grand Rapids MI 49501-0169, fax to: (517) 838-0427, or through your web account at [www.michigan.gov/uiu](http://www.michigan.gov/uiu).
- Protests must be signed or verified unless submitted through your online claim web account. However, the Agency may accept a protest that lacks a signature if the protest can be verified. The Agency will notify you.
- Attach copies of any documents, employer notices, correspondence, or other types of information that may clarify the issue you are protesting. Please retain the original documents for your files, as these documents will not be returned.
- All correspondence must have the claimant's name and Social Security Number, and the name of the employer (if applicable).
- If the 30-day protest period has already lapsed, your statement must indicate why your protest was not submitted on time.

**If you disagree with a redetermination and want to appeal, request a hearing before an Administrative Law Judge:**

- You may mail, fax, or submit an online response to the following: UIA, PO Box 124, Grand Rapids, MI 49501-0124, fax to: 1-818-358-0739, or through your web account at [www.michigan.gov/uiu](http://www.michigan.gov/uiu).
- All written appeals must be signed or verified. However, the Agency may accept an appeal that lacks a signature if the appeal can be verified. The Agency will notify you.

**IMPORTANT ADVOCACY INFORMATION:** After you appeal your redetermination to the Administrative Law Judge, an Advocate may be able to assist you at the hearing. This service is free to claimants and employers. If you are interested in using an Advocate, once you have received your Notice of Hearing, call the Advocacy Program at 1-800-638-3994 and press Option 2. Provide the Advocate Representative with the Appeal Number from your Notice of Hearing form. Some restrictions in service may apply.

**TO THE CLAIMANT:** If you protest or appeal, protect your rights by continuing to certify for benefits. Report using MARVIN, either by telephone or via the Internet at [www.michigan.gov/uiu](http://www.michigan.gov/uiu), and click on either heading, "UIA Online Services for Claimants", or "Certify With MARVIN Online" pending the redetermination or decision on your protest/appeal. If you go back to work, report this fact when you certify.

In accordance with the provisions of the 54B, 52B, benefits (re)determined payable in accordance with this (re)determination will be paid, even though a protest may be filed at a later date. However, if a later redetermination or decision holds that you were not entitled to receive all or part of these benefits, you will be required to repay the benefits improperly received.

If you have any questions, call the UIA at 1-888-500-0017 (TTY callers use 1-888-388-0004).

**METHOD OF SATISFYING 13-WEEK AND 26-WEEK REQUALIFICATION:** Disqualifications imposed for a 13-week or 26-week requalification period will be terminated when you complete the required period. You will be credited with a week of requalification for each week in which you:

1. Certify as directed and meet the same requirements that apply to claiming a benefit payment, or
2. Earn at least 1/13th of the minimum high quarter earnings required to establish a benefit year, rounded down to a full dollar amount. For a benefit year beginning 1/4/2009 and after, the amount is \$220.00.

To re-qualify by certifying, you must report using MARVIN, either by telephone OR via the Internet at [www.michigan.gov/uiu](http://www.michigan.gov/uiu), and click on either heading "UIA Online Services for Claimants" or "Certify With MARVIN Online."

TIA is an Equal Opportunity Employer/Program.

Page 37 of 68 [09/01/2018 05:33:30 PM Eastern Daylight Time] From: 248-247-3310

19 243



UIA 1302  
(Rev. 03-14)

Letter ID: L0024991508

**METHOD OF SATISFYING A REWORK REQUIREMENT:** A disqualification imposed for a voluntary quit can be terminated after you have worked and earned an amount equal to, or greater than, 12 times your weekly benefit amount. A disqualification imposed for a suspension or discharge for misconduct can be terminated after you have worked and earned an amount equal to, or greater than, 17 times your weekly benefit amount. The earnings must be with an employer liable under the 54B, 62B or the unemployment compensation law of another state.

**ELIGIBILITY FOR BENEFITS AFTER COMPLETION OF REQUALIFICATION OR REWORK:** After the requalification or rework requirements are completed, the claimant may be eligible for benefits. If wages earned with the employer involved in the (re)determination fall within the base period of the claim, benefits may be paid to the claimant on the basis of such wages. However, if the requalification requirements are imposed due to a separation under Section 28(1)(h),(i),(j),(k), or (m) of the MES Act, the claimant is not entitled to benefits based on wages earned with the involved employer before the week of disqualification.

**INTEREST:** Interest accrues at the rate of 1% per month (computed on a daily basis), Section 15(a) of the MES Act.

**PENALTIES:** If it is determined that you intentionally made a false statement, misrepresented the facts or concealed material information to obtain benefits, then the penalty provisions of Sections 54 and 62(b) of the Michigan Employment Security Act will be applied and you will be subject to any or all of the following: You would have to repay money received and pay a penalty of two times (if less than \$500 of improper payments) or four times (if \$500 or more of improper payments) the amount of benefits fraudulently received. The two times penalty would be increased to a penalty of 4 times the amount of improper payments if it were a second or subsequent offense. Your benefits will be stopped and you will lose remaining benefits. You will be required to pay court costs (if prosecuted) and fines, face jail time, or you may be required to perform community service, or all of these. Intentional misrepresentation to obtain benefits in excess of \$3,500 is a felony and you may be prosecuted in criminal court.

This is a summary of a previously-mailed (re)determination for which there were protest/appeal rights and is being provided for informational purposes only.

This document is not subject to protest/appeal.

#### AGENCY STATEMENT OF REPRODUCTION OF CONTENT OF ORIGINAL (RE)DETERMINATIONS AND RECONSIDERATIONS

Effective October 1, 2013, the Unemployment Insurance Agency (Agency) converted from its old main frame system, known as 3270, to a new computer based system known as MIDAS (Michigan Integrated Data Automated System).

With the implementation of the new system, the Agency no longer has access to and is unable to reprint actual copies of certain determinations, redeterminations and reconsiderations involving claims for benefits that were originally generated in 3270. However, the exact information, including original mail date printed on the determination, redetermination, and reconsideration, used to generate the document was converted in the new system. Because that original information is stored in the system, for purposes of a hearing resulting from an appeal and/or collection purposes, the Agency is able to recreate a determination, redetermination or reconsideration duplicating the exact information, including original mail date shown on the original document.

For purposes of hearings on appeals and collections, where the original determination, redetermination or reconsideration was issued prior to October 1, 2013, the Agency certifies that the recreated document generated in MIDAS is a true and accurate reproduction of the original document upon which the protest or appeal was filed or which had become final.

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UIA 1301  
(Rev. 04-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Talent Investment Agency  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/uia



Authorized By  
MCL 421.1 et seq.  
Sharon Moffatt-Massey  
DIRECTOR

FRANK LUCENTE  
17371 KINGSBROOKE CIR APT 102  
CLINTON TOWNSHIP MI 48038-3758

Mail Date: November 23, 2015  
Letter ID: L0024888827  
MIN: 0337484032  
Name: FRANK LUCENTE

### Non-Protestable Summary of Previously (Re) Determined Restitution (List of Overpayments)

SSN: ###-##-4837 BYB: July 27, 2008  
Claimant: FRANK LUCENTE Employer Number: 1562348 000  
Original Mail Date: December 01, 2010 Employer Name: DART PROPERTIES II LLC

Should your disqualification or ineligibility be reversed, restitution shall cease if you are not otherwise disqualified or ineligible for unemployment benefits.

Week Ending	Principal	Program	Total
20-Feb-2010	\$362.00	EUC3	\$362.00
20-Feb-2010	\$25.00	FAC	\$25.00
27-Feb-2010	\$362.00	EUC3	\$362.00
27-Feb-2010	\$25.00	FAC	\$25.00
08-Mar-2010	\$362.00	EUC3	\$362.00
08-Mar-2010	\$25.00	FAC	\$25.00
13-Mar-2010	\$362.00	EUC3	\$362.00
13-Mar-2010	\$25.00	FAC	\$25.00
20-Mar-2010	\$362.00	EUC3	\$362.00
20-Mar-2010	\$25.00	FAC	\$25.00
27-Mar-2010	\$362.00	EUC3	\$362.00
27-Mar-2010	\$25.00	FAC	\$25.00
03-Apr-2010	\$362.00	EUC3	\$362.00
03-Apr-2010	\$25.00	FAC	\$25.00
10-Apr-2010	\$362.00	EUC3	\$362.00
10-Apr-2010	\$25.00	FAC	\$25.00
17-Apr-2010	\$362.00	EUC3	\$362.00
17-Apr-2010	\$25.00	FAC	\$25.00
24-Apr-2010	\$362.00	EUC3	\$362.00
24-Apr-2010	\$25.00	FAC	\$25.00

TIA is an Equal Opportunity Employer





UIA 1301  
(Rev. 04-14)

Letter ID: L0024888627

Week Ending	Principal	Program	Total
01-May-2010	\$362.00	EUC3	\$362.00
01-May-2010	\$25.00	FAC	\$25.00
08-May-2010	\$362.00	EUC3	\$362.00
08-May-2010	\$25.00	FAC	\$25.00
15-May-2010	\$25.00	FAC	\$25.00
22-May-2010	\$25.00	FAC	\$25.00
29-May-2010	\$25.00	FAC	\$25.00
05-Jun-2010	\$25.00	FAC	\$25.00
12-Jun-2010	\$25.00	FAC	\$25.00
19-Jun-2010	\$25.00	FAC	\$25.00
	<u>\$4,794.00</u>		<u>\$4,794.00</u>
Penalty	\$18,276.00		<u>\$18,276.00</u>
			<u>\$23,070.00</u>

Claimant must pay to the Agency in cash, by check, money order, EFT via MIWAM or deduction from benefits, restitution as noted above under MES Act, Section 82(a).

Reason for overpayment does not come within the criteria for waiver. If you are unable to repay the balance owed due to indigency, you may request, or reapply for, a waiver due to your financial status at any time via fax at (517) 636-0427, mail at UIA, PO Box 189, Grand Rapids MI 49501-0189, or your MIWAM account.

Repayment arrangements should be made with the Benefit Overpayment Collection (BOC) Unit. For information on repayment or repayment arrangements, contact BOC at 1-800-838-8372 from 9:00 a.m. to 3:00 p.m. Eastern Time Monday through Friday. Checks or money orders must be made payable to the "State of Michigan for UIA." Submit the check or money order with the payment voucher that will be attached to the monthly statement. The address is: State of Michigan, Unemployment Insurance Agency - Restitution, Dept #771760, PO Box 77000 Detroit, MI 48277-1760. DO NOT SEND CASH. You may also make restitution payments through your MIWAM account by setting up electronic funds transfer (EFT) payments.



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UIA 1301  
(Rev. 04-14)

Letter ID: L002488827

This is a summary of a previously-mailed (re)determination for which there were protest/appeal rights and is being provided for informational purposes only.

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CERT(1)

**Report**

Converted Certification: 20-Feb-2010

Menu New Manager

REPORT HISTORY TRANSACTIONS NOTES CORRESPONDENCE LIST

RETURN: CONV CERT PERIOD

Status : Late-Processed SSN [REDACTED]

Due : 27-Feb-2010 FRANK LUCENTE

Received : 02-Mar-2010 Extensions : C3386085-4

Batch : Period : 20-Feb-2010

Sequence :

Media :

Reason :

LINE ITEMS Hide Details

Conv Certification conv2 27-Sep-2013 1 of 1

CONVERTED CERTIFICATION CALCULATION AND CHARGES

CERTIFICATION QUESTIONS

Able and Available Yes ☒ No ☐

Seeking Work Yes ☒ No ☐

Refused Jobs Yes ☐ No ☒

Training or Pension Yes ☐ No ☒

Work Commission Yes ☐ No ☒

Self Employed Yes ☐ No ☒

State Federal UI Yes ☐ No ☒

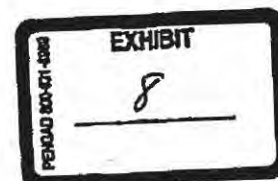
Other Benefits Yes ☐ No ☒

Ed Train Allowed Yes ☐ No ☒

Gross Earnings Received 0.00

1 of  
18 pg

https://midas.som.ad.state.mi.us/9/Web.FastUI/GbW8DUPF/



CERT(2)

Report of		Converted Certification: 27-Feb-2010	
Menu		New Manager	
REPORT HISTORY TRANSACTIONS NOTES CORRESPONDENCE LIST			
RETURN: CONV CERT		PERIOD	
Status	: Online-Processed	SSN	[REDACTED]
Due	: 13-Mar-2010	FRANK LUCENTE	
Received	: 02-Mar-2010	Extensions	: C3368085-4
Batch	:	Period	: 27-Feb-2010
Sequence	:		
Media	:		
Reason	:		
LINE ITEMS		Hide Details	
Conv Certification		chvr2 27-Sep-2013 1 of 1	
CONVERTED CERTIFICATION CALCULATION AND CHARGES			
CERTIFICATION QUESTIONS			
Able and Available	Yes <input checked="" type="radio"/> No <input type="radio"/>		
Seeking Work	Yes <input checked="" type="radio"/> No <input type="radio"/>		
Refused Jobs	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Training or Pension	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Work Commission	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Self Employed	Yes <input type="radio"/> No <input checked="" type="radio"/>		
State Federal UI	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Other Benefits	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Ed Train Allowed	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Gross Earnings Received	0.00		

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https://midas.som.ad.state.mi.us/9/Web.FastUI/GbW8DUPF/

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CERT 3

Report		Converted Certification: 05-Mar-2010	
REPORT		New Manager	
REPORT HISTORY TRANSACTIONS NOTES CORRESPONDENCE LIST			
RETURN: CONV CERT		PERIOD	
Status	: Late-Processed	SSN	[REDACTED]
Date	: 13-Mar-2010	FRANK LUCENTE	
Received	: 16-Mar-2010	Extensions	: C3366065-4
Batch	:	Period	: 08-Mar-2010
Sequence	:		
Media	:		
Reason	:		
LINE ITEMS		Hide Details	
Conv Certification		cmr2 27-Sep-2013 1 of 1	
CONVERTED CERTIFICATION CALCULATION AND CHARGING			
CERTIFICATION QUESTIONS			
Able and Available		Yes	No
Seeking Work		Yes	No
Refused Jobs		Yes	No
Training or Pension		Yes	No
Work Commission		Yes	No
Self Employed		Yes	No
State Federal UI		Yes	No
Other Benefits		Yes	No
Ed Train Allowed		Yes	No
Gross Earnings Received		0.00	

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CERT 4

Report		Converted Certifications: 13-Mar-2010	
Menu		New Manager	
<b>REPORT</b>   <b>ISTORY</b>   <b>TRANSACTIONS</b>   <b>NOTES</b>   <b>CORRESPONDENCE LIST</b>			
RETURN: CONV CERT		PERIOD	
Status	: Online-Processed	SSN	[REDACTED]
Due	: 27-Mar-2010	FRANK LUCENTE	
Received	: 16-Mar-2010	Extensions	: C3366035-4
Batch	:	Period	: 13-Mar-2010
Sequence	:		
Media	:		
Reason	:		
LINE ITEMS		Hide Details	
Conv Certification		cnv2 27-Sep-2013 1 of 1	
<b>CONVERTED CERTIFICATION</b>   <b>CALCULATION AND CHARGING</b>			
CERTIFICATION QUESTIONS			
Able and Available	<input checked="" type="radio"/> Yes <input type="radio"/> No		
Seeking Work	<input checked="" type="radio"/> Yes <input type="radio"/> No		
Refused Jobs	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Training or Pension	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Work Commission	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Self Employed	<input type="radio"/> Yes <input checked="" type="radio"/> No		
State Federal UI	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Other Benefits	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Ed Train Allowed	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Gross Earnings Received	0.00		



CERT (5)

Report		Converted Certification 20-Mar-2010	
Menu		New Manager	
REPORT	HISTORY	TRANSACTIONS	NOTES
CORRESPONDENCE LIST			
RETURN CONV CERT		PERIOD	
Status	: Late-Processed	SSN	[REDACTED]
Due	: 27-Mar-2010	FRANK LUCENTE	
Received	: 30-Mar-2010	Extensions	: C3388085-4
Match	:	Period	: 20-Mar-2010
Sequence	:		
Media	:		
Reason	:		
LINE ITEMS		[Info Detail]	
Conv Certification		cmr2 27-Sep-2013 1 of 1	
CONVERTED CERTIFICATION		CALCULATION AND CHARGING	
CERTIFICATION QUESTIONS			
Able and Available	Yes <input checked="" type="radio"/> No <input type="radio"/>		
Seeking Work	Yes <input checked="" type="radio"/> No <input type="radio"/>		
Refused Jobs	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Training or Pension	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Work Commission	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Self Employed	Yes <input type="radio"/> No <input checked="" type="radio"/>		
State Federal UI	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Other Benefits	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Ed Train Allowed	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Gross Earnings Received	0.00		

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CERT(6)

Report		Converted Certification: 27-Mar-2010	
Menu		New Manager	
REPORT	ISTORY	TRANSACTIONS	NOTES
CORRESPONDENCE LIST			
RETURN: CONV CERT		PERIOD	
Status	: Online-Processed	SSN	[REDACTED]
Due	: 10-Apr-2010	FRANK LUCENTE	
Received	: 30-Mar-2010	Extensions	: C3366085-4
Match	:	Period	: 27-Mar-2010
Sequence	:		
Media	:		
Reason	:		
40			
DOE ITEMS		File Details	
Conv Certification		cmr2 27-Sep-2013 1 of 1	
3 CONVERTED CERTIFICATION		2 CALCULATION AND CHARGING	
CERTIFICATION QUESTIONS			
Able and Available	Yes <input checked="" type="radio"/> No <input type="radio"/>		
Seeking Work	Yes <input checked="" type="radio"/> No <input type="radio"/>		
Refused Jobs	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Training or Pension	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Work Commission	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Self Employed	Yes <input type="radio"/> No <input checked="" type="radio"/>		
State Federal UI	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Other Benefits	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Ed Train Allowed	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Gross Earnings Received	0.00		



CERT 7

Report		Converted Certifications 03-Apr-2010	
Menu		New Manager	
REPORT	ISTORY	TRANSACTIONS	NOTES
RETURN: CONV CERT		PERIOD	
Status	: Late-Processed	SSN	[REDACTED]
Due	: 10-Apr-2010	FRANK LUCENTE	
Received	: 13-Apr-2010	Extensions	: C3366085-4
Which	:	Period	: 03-Apr-2010
Sequence	:		
Media	:		
Reason	:		
CONE ITEMS		[Hide Details]	
Conv Certification		cmw2 27-Sep-2013 1 of 1	
CONVERTED CERTIFICATION CALCULATION AND CHARGING			
CERTIFICATION QUESTIONS			
Able and Available	Yes <input checked="" type="radio"/> No <input type="radio"/>		
Seeking Work	Yes <input checked="" type="radio"/> No <input type="radio"/>		
Refused Jobs	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Training or Pension	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Work Commission	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Self Employed	Yes <input type="radio"/> No <input checked="" type="radio"/>		
State Federal UI	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Other Benefits	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Ed Train Allowed	Yes <input type="radio"/> No <input checked="" type="radio"/>		
Gross Earnings Received	0.00		

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<https://midas.som.ad.state.mi.us/9/Web.FastUI/GbW8DUPF/>

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CERT 8

Report	
Converted Certification: 10-Apr-2010	
Menu New Mortgage	
REPORT HISTORY TRANSACTIONS NOTES CORRESPONDENCE LIST	
RETURN: CONV CERT	PERIOD
Status : Online-Processed	SSN : [REDACTED]
Due : 24-Apr-2010	FRANK LUCENTE
Received : 13-Apr-2010	Extensions : C3366085-4
Batch :	Period : 10-Apr-2010
Sequence :	
Media :	
Reason :	
HIDE ITEMS	
Conv Certification	
CONVERTED CERTIFICATION	
CERTIFICATION QUESTIONS	
Able and Available	Yes <input checked="" type="radio"/> No <input type="radio"/>
Seeking Work	Yes <input checked="" type="radio"/> No <input type="radio"/>
Refused Jobs	Yes <input type="radio"/> No <input checked="" type="radio"/>
Training or Pension	Yes <input type="radio"/> No <input checked="" type="radio"/>
Work Commission	Yes <input type="radio"/> No <input checked="" type="radio"/>
Self Employed	Yes <input type="radio"/> No <input checked="" type="radio"/>
State Federal UI	Yes <input type="radio"/> No <input checked="" type="radio"/>
Other Benefits	Yes <input type="radio"/> No <input checked="" type="radio"/>
Ed Train Allowed	Yes <input type="radio"/> No <input checked="" type="radio"/>
Gross Earnings Received	0.00

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CERT 9

Report	
Converted Certification: 17-Apr-2010	
Menu New Manager	
REPORT HISTORY TRANSACTIONS NOTES CORRESPONDENCE LIST	
RETURN: CONV CERT	PERIOD
Status : Late-Processed	SSN [REDACTED]
Due : 24-Apr-2010	FRANK LUCENTE
Received : 27-Apr-2010	Extensions : C3366085-4
Batch :	Period : 17-Apr-2010
Sequence :	
Media :	
Reason :	
ONE ITEMS	Hide Details
Conv Certification	cnv2 27-Sep-2013 1 of 1
CONVERTED CERTIFICATION CALCULATION AND CHARGING	
CERTIFICATION QUESTIONS	
Able and Available	Yes <input checked="" type="radio"/> No <input type="radio"/>
Seeking Work	Yes <input checked="" type="radio"/> No <input type="radio"/>
Refused Jobs	Yes <input type="radio"/> No <input checked="" type="radio"/>
Training or Pension	Yes <input type="radio"/> No <input checked="" type="radio"/>
Work Commission	Yes <input type="radio"/> No <input checked="" type="radio"/>
Self Employed	Yes <input type="radio"/> No <input checked="" type="radio"/>
State Federal UI	Yes <input type="radio"/> No <input checked="" type="radio"/>
Other Benefits	Yes <input type="radio"/> No <input checked="" type="radio"/>
Ed Train Allowed	Yes <input type="radio"/> No <input checked="" type="radio"/>
Gross Earnings Received	0.00

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<https://midas.som.ad.state.mi.us/9/Web.FastUI/GbW8DUPF/>

6/16/2016

CERT 10

Report		Converted Certification 24-Apr-2010	
Menu		New Manager	
REPORT HISTORY TRANSACTIONS NOTES CORRESPONDENCE LIST			
RETURN: CONV CERT		PERIOD	
Status	: On-time-Processed	SSN	FRANK LUCENTE
Due	: 08-May-2010	Extensions	: C3368085-4
Received	: 27-Apr-2010	Period	: 24-Apr-2010
Batch	:		
Sequence	:		
Media	:		
Reason	:		
LINE ITEMS		How Details	
Conv Certification		cnv2 27-Sep-2013 1 of 1	
CONVERTED CERTIFICATION ? CALCULATION AND CHARGING			
CERTIFICATION QUESTIONS			
Able and Available	<input checked="" type="radio"/> Yes <input type="radio"/> No		
Seeking Work	<input checked="" type="radio"/> Yes <input type="radio"/> No		
Refused Jobs	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Training or Pension	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Work Commission	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Self Employed	<input type="radio"/> Yes <input checked="" type="radio"/> No		
State Federal UI	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Other Benefits	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Ed Train Allowed	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Gross Earnings Received	0.00		

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CERT 11

Report	
Converted Certification: 01-May-2010	
Menu New Manager	
REPORT HISTORY TRANSACTIONS NOTES CORRESPONDENCE LIST	
RETURN: CONV CERT	PERIOD
Status : Late-Processed	SSN [REDACTED]
Due : 06-May-2010	FRANK LUCENTE
Received : 11-May-2010	Extensions : C3358005-4
Batch :	Period : 01-May-2010
Sequence :	
Media :	
Reason :	
LINE ITEMS	
Conv Certification	
CONVERTED CERTIFICATION CALCULATION AND CHARGING	
CERTIFICATION QUESTIONS	
Able and Available	Yes <input checked="" type="radio"/> No <input type="radio"/>
Seeking Work	Yes <input checked="" type="radio"/> No <input type="radio"/>
Refused Jobs	Yes <input type="radio"/> No <input checked="" type="radio"/>
Training or Pension	Yes <input type="radio"/> No <input checked="" type="radio"/>
Work Commission	Yes <input type="radio"/> No <input checked="" type="radio"/>
Self Employed	Yes <input type="radio"/> No <input checked="" type="radio"/>
State Federal UI	Yes <input type="radio"/> No <input checked="" type="radio"/>
Other Benefits	Yes <input type="radio"/> No <input checked="" type="radio"/>
Ed Train Allowed	Yes <input type="radio"/> No <input checked="" type="radio"/>
Gross Earnings Received	0.00

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CERT 12

Report	
Converted Certifications: 08-May-2010	
Menu New Member	
REPORT HISTORY TRANSACTIONS NOTES CORRESPONDENCE LIST	
RETURN: CONV CERT	PERIOD
Status : Online-Processed	SSN [REDACTED]
Due : 22-May-2010	FRANK LUCENTE
Received : 11-May-2010	Extensions : C3385085-4
Batch :	Period : 08-May-2010
Sequence :	
Media :	
Reason :	
ONE ITEMS	
Conv Certification	cnv2 27-Sep-2013 1 of 1
CONVERTED CERTIFICATION CALCULATION AND CHARGING	
CERTIFICATION QUESTIONS	
Able and Available	<input checked="" type="radio"/> Yes <input type="radio"/> No
Seeking Work	<input checked="" type="radio"/> Yes <input type="radio"/> No
Refused Jobs	<input type="radio"/> Yes <input checked="" type="radio"/> No
Training or Pension	<input type="radio"/> Yes <input checked="" type="radio"/> No
Work Commission	<input type="radio"/> Yes <input checked="" type="radio"/> No
Self Employed	<input type="radio"/> Yes <input checked="" type="radio"/> No
State Federal UI	<input type="radio"/> Yes <input checked="" type="radio"/> No
Other Benefits	<input type="radio"/> Yes <input checked="" type="radio"/> No
Ed Train Allowed	<input type="radio"/> Yes <input checked="" type="radio"/> No
Gross Earnings Received	0.00

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<https://midas.som.ad.state.mi.us/9/Web.FastUI/GbW8DUPF/>

6/16/2016



CERT 13

Report of...	
Converted Certification: 15-May-2010	
Menu New Manager	
REPORT HISTORY TRANSACTIONS NOTES CORRESPONDENCE LIST	
RETURN: CONV CERT	PERIOD
Status : Late-Processed	SSN [REDACTED]
Due : 22-May-2010	FRANK LUCENTE
Received : 25-May-2010	Extensions : C3366085-5
Batch :	Period : 15-May-2010
Sequence :	
Media :	
Reason :	
LINE ITEMS	
Conv Certification	
cnr2 27-Sep-2013 1 of 1	
CONVERTED CERTIFICATION CALCULATION AND CHARGING	
CERTIFICATION QUESTIONS	
Able and Available	<input checked="" type="radio"/> Yes <input type="radio"/> No
Seeking Work	<input checked="" type="radio"/> Yes <input type="radio"/> No
Refused Jobs	<input type="radio"/> Yes <input checked="" type="radio"/> No
Training or Pension	<input type="radio"/> Yes <input checked="" type="radio"/> No
Work Commission	<input type="radio"/> Yes <input checked="" type="radio"/> No
Self Employed	<input type="radio"/> Yes <input checked="" type="radio"/> No
State Federal UI	<input type="radio"/> Yes <input checked="" type="radio"/> No
Other Benefits	<input type="radio"/> Yes <input checked="" type="radio"/> No
Ed Train Allowed	<input type="radio"/> Yes <input checked="" type="radio"/> No
Gross Earnings Received	0.00

Pg 13 of 18

<https://midas.som.ad.state.mi.us/9/Web.FastUI/GbW8DUPF/>

6/16/2016

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RECEIVED by MSC 9/9/2020 8:16:51 PM

CERT 14

Report		Converted Certification-22 May-2010	
Menu		New Manager	
REPORT	HISTORY	TRANSACTIONS	NOTES
RETURN: CONV CERT	PERIOD		
Status : Online-Processed	SSN	FRANK LUCENTE	
Due : 05-Jun-2010	Extensions : C3368085-5		
Received : 25-May-2010	Period : 22-May-2010		
Batch :			
Sequence :			
Media :			
Reason :			
LINE ITEMS			
Conv Certification		cmr2 27-Sep-2013 1 of 1	
CONVERTED CERTIFICATION			
CERTIFICATION QUESTIONS			
Able and Available	Yes	No	
Seeking Work	Yes	No	
Refused Jobs	Yes	No	
Training or Pension	Yes	No	
Work Commission	Yes	No	
Self Employed	Yes	No	
State Federal UI	Yes	No	
Other Benefits	Yes	No	
Ed Train Allowed	Yes	No	
Gross Earnings Received	0.00		

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CERT (15)

Report	
Converted Certification: 29-May-2010	
Menu New Manager	
<b>REPORT</b> HISTORY TRANSACTIONS NOTES CORRESPONDENCE LIST	
RETURN: CONV CERT	PERIOD
Status : Late-Processed	SSN [REDACTED]
Due : 05-Jun-2010	FRANK LUCENTE
Received : 08-Jun-2010	Extensions : C3368085-5
Batch :	Period : 29-May-2010
Sequence :	
Media :	
Reason :	
LINE ITEMS <span style="float: right;">Hide Details</span>	
Conv Certification <span style="float: right;">cwr2 27-Sep-2013 1 of 1</span>	
<b>CONVERTED CERTIFICATION</b> CALCULATION AND CHARGING	
<b>CERTIFICATION QUESTIONS</b>	
Able and Available	<input checked="" type="radio"/> Yes <input type="radio"/> No
Seeking Work	<input checked="" type="radio"/> Yes <input type="radio"/> No
Refused Jobs	<input type="radio"/> Yes <input checked="" type="radio"/> No
Training or Pension	<input type="radio"/> Yes <input checked="" type="radio"/> No
Work Commission	<input type="radio"/> Yes <input checked="" type="radio"/> No
Self Employed	<input type="radio"/> Yes <input checked="" type="radio"/> No
State Federal UI	<input type="radio"/> Yes <input checked="" type="radio"/> No
Other Benefits	<input type="radio"/> Yes <input checked="" type="radio"/> No
Ed Train Allowed	<input type="radio"/> Yes <input checked="" type="radio"/> No
Gross Earnings Received	0.00

RECEIVED by MSC 9/9/2020 8:16:51 PM

19 15 of 18

CERT 16

Report		Converted Certification: 05-Jun-2010	
Menu		New Manager	
REPORT	ISTORY	TRANSACTIONS	NOTES
CORRESPONDENCE LIST			
RETURN: CONV CERT		PERIOD	
Status	: Online-Processed	SSN	FRANK LUCENTE
Due	: 19-Jun-2010	Extensions	: C3366085-5
Received	: 06-Jun-2010	Period	: 05-Jun-2010
Batch	:		
Sequence	:		
Media	:		
Reason	:		
LINE ITEMS		Print Details	
Conv Certification		cnv2 27-Sep-2013 1 of 1	
CONVERTED CERTIFICATION CALCULATION AND CHARGES			
CERTIFICATION QUESTIONS			
Able and Available	<input checked="" type="radio"/> Yes <input type="radio"/> No		
Seeking Work	<input checked="" type="radio"/> Yes <input type="radio"/> No		
Refused Jobs	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Training or Pension	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Work Commission	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Self Employed	<input type="radio"/> Yes <input checked="" type="radio"/> No		
State Federal UI	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Other Benefits	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Ed Train Allowed	<input type="radio"/> Yes <input checked="" type="radio"/> No		
Gross Earnings Received	0.00		

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CERT 17

Report	
Converted Certification: 12-Jun-2010	
<a href="#">Menu</a> <a href="#">New Manager</a>	
<a href="#">REPORT</a> <a href="#">HISTORY</a> <a href="#">TRANSACTIONS</a> <a href="#">NOTES</a> <a href="#">CORRESPONDENCE LIST</a>	
RETURN: CONV CERT	PERIOD
Status : Late-Processed	SSN [REDACTED]
Due : 19-Jun-2010	FRANK LUCENTE
Received : 22-Jun-2010	Extensions : C3368085-5
Batch :	Period : 12-Jun-2010
Sequence :	
Media :	
Reason :	
ONE ITEMS	Hide Details
Conv Certification	cnvr2 27-Sep-2013 1 of 1
<a href="#">CONVERTED CERTIFICATION</a> <a href="#">CALCULATION AND CHARGING</a>	
CERTIFICATION QUESTIONS	
Able and Available	Yes <input checked="" type="radio"/> No <input type="radio"/>
Seeking Work	Yes <input checked="" type="radio"/> No <input type="radio"/>
Refused Jobs	Yes <input type="radio"/> Not <input checked="" type="radio"/>
Training or Pension	Yes <input type="radio"/> Not <input checked="" type="radio"/>
Work Commission	Yes <input type="radio"/> Not <input checked="" type="radio"/>
Self Employed	Yes <input type="radio"/> Not <input checked="" type="radio"/>
State Federal UI	Yes <input type="radio"/> Not <input checked="" type="radio"/>
Other Benefits	Yes <input type="radio"/> Not <input checked="" type="radio"/>
Ed Train Allowed	Yes <input type="radio"/> Not <input checked="" type="radio"/>
Gross Earnings Received	0.00

Pg 17 of 18

<https://midas.som.ad.state.mi.us/9/Web.FastUI/GbW8DUPF/>

6/16/2016

CERT 18

Report	
Converted Certification 19-Jun-2010	
Menu New Manager	
REPORT HISTORY TRANSACTIONS NOTES CORRESPONDENCE LIST	
RETURN: CONV CERT	PERIOD
Status : Online-Processed	SSN [REDACTED]
Due : 03-Jul-2010	FRANK LUCENTE
Received : 22-Jun-2010	Extensions : C3366085-5
Batch :	Period : 19-Jun-2010
Sequence :	
Media :	
Reason :	
HIDE ITEMS	
Conv Certification	
cnv2 27-Sep-2013 1 of 1	
CONVERTED CERTIFICATION CALCULATION AND CHARGING	
CERTIFICATION QUESTIONS	
Able and Available	Yes <input checked="" type="radio"/> No <input type="radio"/>
Seeking Work	Yes <input checked="" type="radio"/> No <input type="radio"/>
Refused Jobs	Yes <input type="radio"/> No <input checked="" type="radio"/>
Training or Pension	Yes <input type="radio"/> No <input checked="" type="radio"/>
Work Commission	Yes <input type="radio"/> No <input checked="" type="radio"/>
Self Employed	Yes <input type="radio"/> No <input checked="" type="radio"/>
State Federal UI	Yes <input type="radio"/> No <input checked="" type="radio"/>
Other Benefits	Yes <input type="radio"/> No <input checked="" type="radio"/>
Ed Train Allowed	Yes <input type="radio"/> No <input checked="" type="radio"/>
Gross Earnings Received	0.00

Pg 18 of 18



UIA 1088  
(Rev. 01/12)

State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/ila](http://www.michigan.gov/ila)

Authorized by  
MCL 421.1 et seq.

FRANK . LUCENTE  
23830 DENTON ST 129  
CLINTON TOWNSHIP, MI. 48038-

Statement Date :  
SSN :

02/24/2012  
[REDACTED] 1637

## NOTICE OF PAYMENT DUE

Current Overpayment Balance:	\$6,966.00
Interest Balance as of 02/24/2012:	\$0.00
Current Penalty Balance:	\$26,964.00
Minimum Monthly Payment Due:	\$125.00

You received a determination from the Unemployment Insurance Agency (UIA) that you were overpaid unemployment benefits. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the current overpayment, interest, and penalty balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

Your Michigan State Income Tax Refund, as provided by MCL § 421.62(a), will be intercepted by the UIA and used as payment toward the amount you owe if payment in full is not made on your account. Your Federal Income Tax Refund, as provided by 26 U.S.C. 6402(f), will be intercepted by the UIA for overpayment of unemployment benefits due to intentional misrepresentation or unreported earnings if payment in full is not made on your account. The current overpayment, current interest, and current penalty balances must be paid in full to avoid having the UIA intercept your tax refund(s). Paying the minimum monthly payment will not stop your income tax refund(s) from being intercepted by the UIA. In addition, if you are currently receiving unemployment benefits and overpayment deductions are being withheld from your payments by the UIA, your income tax refund(s) will still be intercepted by the UIA to pay off your balance(s).

Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:



BENEFIT OVERPAYMENT COLLECTION UNIT  
P.O. BOX 9045

DETROIT, MI 48202-9045

Telephone: 1-800-638-6372 (TTY customers use 1-888-386-0004)  
from 8:00 AM to 3:30 PM Eastern Time



UNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNIT  
PAYMENT COUPON

SSN: [REDACTED] 1637  
Name: FRANK . LUCENTE  
Statement Date: 02/24/2012  
Records Office: 023

If your address has changed, check here ☐ and provide new address:

Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Zip/Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

LARA IS AN EQUAL OPPORTUNITY EMPLOYER



**MIDAS**

Log Out

Search

FRANK LUCENTE: 4837

Case: 0-000-211-013

Nonmonetary Issue

New Manager

Notifications

**Case**

Case: 0-000-211-016 Nonmonetary Issue

**Nonmonetary Issue**

Appeal Scheduled

Work Date: 25-Jun-2018

Ext

Claim # C3305085-4 F3

17371 KINGSBROOKE CIR APT 102 CLINTON TOWNSHIP

LOG	SOURCE	ADD RECEIVED	ACTION	DATE
<input type="checkbox"/> Created	Opened			15-Jan-2018
<input type="checkbox"/> Staged	Protest Received			15-Jan-2018
<input type="checkbox"/> Staged	Redetermination Denied			15-Jan-2018
<input type="checkbox"/> Letter	LRA 1077 - Denial of Reconsideration - LOG2687873			15-Jan-2018
<input type="checkbox"/> Staged	Issue Closed, Level 2			15-Jan-2018
<input type="checkbox"/> Staged	Redetermination Denied			19-May-2018
<input type="checkbox"/> Staged	Appeal Received			19-May-2018
<input type="checkbox"/> Staged	Appeal Submitted			19-May-2018
<input type="checkbox"/> Letter	LRA 1302 - Legacy (m) Determination - LOG26954794			20-May-2018
<input type="checkbox"/> Letter	LRA 1301 - Legacy Over Detail - LOG26722908			27-May-2018
<input type="checkbox"/> Staged	Appeal Scheduled			31-May-2018

**CURRENT STAGE ALERTS**

**NEXT STAGE**

Appeal Received

Appeal Scheduled

**NONMONETARY ISSUE**

Nonmonetary Issue

batch: 31-May-2018 14 of 14

**MAYOR CASE ISSUES**

DETAILS

Summary

Revised1

Revised2

Revised3

**LEGACY DATA**

DETAILS

Summary

Revised1

Revised2

Revised3

**MISREPRESENTATION**

DETAILS

Summary

Revised1

Revised2

Revised3

**PROTEST (S) AND APPEALS**

DETAILS

Summary

Revised1

Revised2

Revised3

**PROTEST INFORMATION**

Protest/Appeal Type	Redetermination	Protest Party	Claimant	Date Filed	11-Jan-2018
Original Issue	Misrepresentation		Protest Closing Issue	Misrepresentation	
Original Determination Date	01-Dec-2010		Redetermination Issued	19-Jan-2018	
Original Period From	20-Feb-2010		Protest Filed From	20-Feb-2010	
Original Period To	19-Jun-2010		Protest Period To	19-Jun-2010	
Original Separation Date			Protest Separation Date		
Prior Result	Disqualified		Result	Disqualified	
Ad / Void Issue	<input type="checkbox"/>		Outcome	Adherence	

Protest Party Comments

No New Information Indicated on MIVM ☐

No Initial Employer Fact Finding Response ☐

Let's Protest ☒

Good Cause for Lateness ☐

08011640052017

https://midas.som.ad.state.mi.us/9/Web.FastUI/TEPNZtZD/

6/3/2016

154





Date Mailed: June 01, 2016  
Appeal Number: 16-014572  
Case Number: 6281815  
Claimant SSN: XXX-XX-4637  
Employer No.: 1562346

### NOTICE OF IN PERSON HEARING

On January 29, 2016, the claimant appealed an Unemployment Insurance Agency (Agency) Adjudication issued on January 19, 2016.

Under Michigan Statutes, MCL 421.33, a hearing will be held before Administrative Law Judge **Michael Wakeley**. Failure to attend hearing may result in an unfavorable decision against you.

**Date:** June 21, 2016

**Time:** 10:30 AM

**Location:**

MAHS Detroit 2nd Floor

3026 W. Grand Blvd

Suite 2-700 Annex (ID Required)

Detroit, MI 48202

The hearing is scheduled for 90 minutes.

Issues to be considered at this hearing:

Section 32a(2)	Whether or not appellant can establish good cause for reconsideration. Underlying Issue:
Section 62(b)	Whether claimant intentionally made a false statement, misrepresented, or concealed material information to obtain benefits.
Section 54(b)	Claimant must pay restitution/damages to Agency under Section 54(b)-intentional misrepresentation. Sections that may apply: 62(a), 62(b), 20(a). Each party shall provide witness list and documentary evidence to other parties and Judge not less than 10 days before a fraud hearing, per R 792.11408(2). **Due to the distance to the hearing site, parties may request telephone participation.

Please contact the Michigan Administrative Hearing System at (313) 456-2700 if you require accommodation for the hearing, such as a sign language interpreter, reader, or any assistive equipment.

Front

File Copy

MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Phone: (313) 456-2700 | Fax: (313) 456-2707

**Interested Parties that were also mailed this notice:**

**Appellant** FRANK LUCENTE  
17371 KINGSBROOKE CIR  
APT 102  
CLINTON TOWNSHIP, MI 480383758

**Respondent** DART PROPERTIES II LLC  
500 HOGSBACK RD  
MASON, MI 48854-8523

**Interested Party** UIA FRAUD INVESTIGATION  
3024 W. GRAND BLVD, STE 12-400  
DETROIT, MI 48202

**Interested Party** ED ALVARADO, GR RICC  
PO BOX 169  
GRAND RAPIDS, MI 49501-0169

**Additional Hearing Information**

**RECORDS AND WITNESSES:** If you wish to offer any papers or records relevant to the case, including any previous papers or records sent to the Unemployment Insurance Agency. YOU MUST FAX OR MAIL THEM TO THE JUDGE AND THE OTHER PARTY in time to ensure the documents are received before the date of the scheduled hearing. You may present witnesses to testify on your behalf. A witness is a person who has direct knowledge of the issue in dispute.

**ADVOCACY PROGRAM:** The Advocacy Program is operated by the Unemployment Insurance Agency (UIA) and provides advocacy assistance to the unemployed worker or employer. If you do not have an Advocate by the time of this hearing, that in and of itself will not entitle you to an adjournment. For more information please call 1-800-638-3994.

**INFORMATION:** If you want additional information regarding the appeal process, please visit the following website [http://www.michigan.gov/documents/uia\\_UC1800\\_76144\\_7.pdf](http://www.michigan.gov/documents/uia_UC1800_76144_7.pdf) or refer to your unemployment guide book. Additional questions may be directed to MAHS at:

**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**  
3026 W. Grand Blvd  
Suite 2-700 Annex  
Detroit, MI 48202  
Phone: (313) 456-2700 | Fax: (313) 456-2707





Date Mailed: June 15, 2016  
Appeal Number: 16-014572  
Case Number: 6281815  
Claimant SSN: XXX-XX-4637  
Employer No.: 1562346

**NOTICE OF IN PERSON HEARING**

On January 29, 2016, the claimant appealed an Unemployment Insurance Agency (Agency) Adjudication issued on January 19, 2016.

Under Michigan Statutes, MCL 421.33, a hearing will be held before Administrative Law Judge Michael Wakeley. Failure to attend hearing may result in an unfavorable decision against you.

**Date:** July 18, 2016

**Time:** 08:30 AM

**Location:**

MAHS 7th Floor

3024 W. Grand Blvd.

Suite 7-450 (ID Required)

Detroit, MI 48202

**Special Instructions:** PLEASE NOTE THE HEARING  
WILL TAKE PLACE ON THE SECOND FLOOR STE 2-  
700 IN HEARING ROOM #6

The hearing is scheduled for 90 minutes.

Issues to be considered at this hearing:

Section 32a(2)	Whether or not appellant can establish good cause for reconsideration. Underlying issue:
Section 62(b)	Whether claimant intentionally made a false statement, misrepresented, or concealed material information to obtain benefits.
Section 54(b)	Claimant must pay restitution/damages to Agency under Section 54(b)-intentional misrepresentation. Sections that may apply: 62(a), 62(b), 20(a). Each party shall provide witness list and documentary evidence to other parties and Judge not less than 10 days before a fraud hearing, per R 792.11408(2). **Due to the distance to the hearing site, parties may request telephone participation.

Please contact the Michigan Administrative Hearing System at (313) 456-0423 if you require accommodation for the hearing, such as a sign language interpreter, reader, or any assistive equipment.

Front

File Copy

MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Phone: (313) 456-0423 Fax: (313) 456-4790

**Interested Parties that were also mailed this notice:**

**Appellant** FRANK LUCENTE  
17371 KINGSBROOKE CIR  
APT 102  
CLINTON TOWNSHIP, MI 480383758

**Respondent** DART PROPERTIES II LLC  
500 HOGSBACK RD  
MASON, MI 48854-8523

**Interested Party** UIA FRAUD INVESTIGATION  
3024 W. GRAND BLVD, STE 12-400  
DETROIT, MI 48202

**Interested Party** ED ALVARADO, GR RICC  
PO BOX 169  
GRAND RAPIDS, MI 49501-0169

**Additional Hearing Information**

**RECORDS AND WITNESSES:** If you wish to offer any papers or records relevant to the case, including any previous papers or records sent to the Unemployment Insurance Agency. **YOU MUST FAX OR MAIL THEM TO THE JUDGE AND THE OTHER PARTY** in time to ensure the documents are received before the date of the scheduled hearing. You may present witnesses to testify on your behalf. A witness is a person who has direct knowledge of the issue in dispute.

**ADVOCACY PROGRAM:** The Advocacy Program is operated by the Unemployment Insurance Agency (UIA) and provides advocacy assistance to the unemployed worker or employer. If you do not have an Advocate by the time of this hearing, that in and of itself will not entitle you to an adjournment. For more information please call 1-800-638-3994.

**INFORMATION:** If you want additional information regarding the appeal process, please visit the following website [http://www.michigan.gov/documents/uia\\_UC1800\\_76144\\_7.pdf](http://www.michigan.gov/documents/uia_UC1800_76144_7.pdf) or refer to your unemployment guide book. Additional questions may be directed to MAHS at:

**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**  
3024 W. Grand Blvd.  
Suite 7-450  
Detroit, MI 48202  
Phone: (313) 456-0423 | Fax: (313) 456-4790





Date Mailed: June 01, 2016  
Appeal Number: 16-014604  
Case Number: 6610595  
Claimant SSN: XXX-XX-4637  
Employer No.: 1562346

### NOTICE OF IN PERSON HEARING

On January 29, 2016, the claimant appealed an Unemployment Insurance Agency (Agency) Adjudication issued on January 19, 2016.

Under Michigan Statutes, MCL 421.33, a hearing will be held before Administrative Law Judge Michael Wakeley. Failure to attend hearing may result in an unfavorable decision against you.

Date: June 21, 2016

Time: 10:30 AM

Location:

MAHS Detroit 2nd Floor

3026 W. Grand Blvd

Suite 2-700 Annex (ID Required)

Detroit, MI 48202

The hearing is scheduled for 90 minutes.

Issues to be considered at this hearing:

Section 32a(2)	Whether or not appellant can establish good cause for reconsideration. Underlying issue:
Section 48	Whether claimant is eligible for benefits under the employed provision.
Section 54(b)	Claimant must pay restitution/damages to Agency under Section 54(b)-intentional misrepresentation. Sections that may apply: 62(a), 62(b), 20(a). Each party shall provide witness list and documentary evidence to other parties and Judge not less than 10 days before a fraud hearing, per R 792.11408(2). **Due to the distance to the hearing site, parties may request telephone participation.

Please contact the Michigan Administrative Hearing System at (313) 456-2700 if you require accommodation for the hearing, such as a sign language interpreter, reader, or any assistive equipment.

Front

File Copy

MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Phone: (313) 456-2700| Fax: (313) 456-2707

**Interested Parties that were also mailed this notice:**

**Appellant** FRANK LUCENTE  
17371 KINGSBROOKE CIR  
APT 102  
CLINTON TOWNSHIP, MI 480383758

**Respondent** DART PROPERTIES II LLC  
500 HOGSBACK RD  
MASON, MI 48854-3523

**Interested Party** UIA FRAUD INVESTIGATION  
3024 W. GRAND BLVD, STE 12-400  
DETROIT, MI 48202

**Interested Party** ED ALVARADO, GR RICC  
PO BOX 169  
GRAND RAPIDS, MI 49501-0169

**Additional Hearing Information**

**RECORDS AND WITNESSES:** If you wish to offer any papers or records relevant to the case, including any previous papers or records sent to the Unemployment Insurance Agency. **YOU MUST FAX OR MAIL THEM TO THE JUDGE AND THE OTHER PARTY** in time to ensure the documents are received before the date of the scheduled hearing. You may present witnesses to testify on your behalf. A witness is a person who has direct knowledge of the issue in dispute.

**ADVOCACY PROGRAM:** The Advocacy Program is operated by the Unemployment Insurance Agency (UIA) and provides advocacy assistance to the unemployed worker or employer. If you do not have an Advocate by the time of this hearing, that in and of itself will not entitle you to an adjournment. For more information please call 1-800-638-3994.

**INFORMATION:** If you want additional information regarding the appeal process, please visit the following website [http://www.michigan.gov/documents/uia\\_UC1800\\_76144\\_7.pdf](http://www.michigan.gov/documents/uia_UC1800_76144_7.pdf) or refer to your unemployment guide book. Additional questions may be directed to MAHS at:

**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**  
3026 W. Grand Blvd  
Suite 2-700 Annex  
Detroit, MI 48202  
Phone: (313) 456-2700 | Fax: (313) 456-2707





Date Mailed: June 15, 2016  
Appeal Number: 16-014604  
Case Number: 6610595  
Claimant SSN: XXX-XX-4637  
Employer No.: 1562346

### NOTICE OF IN PERSON HEARING

On January 29, 2016, the claimant appealed an Unemployment Insurance Agency (Agency) Adjudication issued on January 19, 2016.

Under Michigan Statutes, MCL 421.33, a hearing will be held before Administrative Law Judge **Michael Wakeley**. Failure to attend hearing may result in an unfavorable decision against you.

**Date:** July 18, 2016

**Time:** 08:30 AM

**Location:**

MAHS 7th Floor

3024 W. Grand Blvd.

Suite 7-450 (ID Required)

Detroit, MI 48202

**Special Instructions:** PLEASE NOTE HEARING WILL  
TAKE PLACE ON THE SECOND FLOOR IN STE 2-700  
HEARING ROOM #6

The hearing is scheduled for 90 minutes.

Issues to be considered at this hearing:

Section 32a(2)

Section 48

Section 54(b)

Whether or not appellant can establish good cause for reconsideration. Underlying issue:

Whether claimant is eligible for benefits under the employed provision.

Claimant must pay restitution/damages to Agency under Section 54(b)-intentional misrepresentation. Sections that may apply: 62(a), 62(b), 20(a). Each party shall provide witness list and documentary evidence to other parties and Judge not less than 10 days before a fraud hearing, per R 792.11408(2). \*\*Due to the distance to the hearing site, parties may request telephone participation.

**Please contact the Michigan Administrative Hearing System at (313) 456-0423 if you require accommodation for the hearing, such as a sign language interpreter, reader, or any assistive equipment.**

**Interested Parties that were also mailed this notice:**

**Appellant** FRANK LUCENTE  
17371 KINGSBROOKE CIR  
APT 102  
CLINTON TOWNSHIP, MI 480383758

**Respondent** DART PROPERTIES II LLC  
500 HOGSBACK RD  
MASON, MI 48854-8523

**Interested Party** UIA FRAUD INVESTIGATION  
3024 W. GRAND BLVD, STE 12-400  
DETROIT, MI 48202

**Interested Party** ED ALVARADO, GR RICC  
PO BOX 169  
GRAND RAPIDS, MI 49501-0169

**Additional Hearing Information**

**RECORDS AND WITNESSES:** If you wish to offer any papers or records relevant to the case, including any previous papers or records sent to the Unemployment Insurance Agency, YOU MUST FAX OR MAIL THEM TO THE JUDGE AND THE OTHER PARTY in time to ensure the documents are received before the date of the scheduled hearing. You may present witnesses to testify on your behalf. A witness is a person who has direct knowledge of the issue in dispute.

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3024 W. Grand Blvd.  
Suite 7-450  
Detroit, MI 48202  
Phone: (313) 456-0423 | Fax: (313) 456-4790



**GWINN TAURIAINEN PLLC**

Attorneys and Counselors at Law  
901 Wilshire Drive, Suite 550  
Troy, MI 48064  
(248) 247-3300  
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Daniel A. Gwinn  
[daniel@gwinnlegal.com](mailto:daniel@gwinnlegal.com)

Kari L. Tauriainen  
[kari@gwinnlegal.com](mailto:kari@gwinnlegal.com)

**FACSIMILE TRANSMITTAL**

To: LARA - Unemployment Insurance Agency Fax No: 517 636 0427

From: GWINN TAURIAINEN PLLC Date: 5-16-16

Number of Pages: 12 Plus Cover

Message: Re Claimant 03374840.32

\*\*\*\*\*  
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May 16, 2016

**VIA FACSIMILE ONLY (517) 638-0427**

State of Michigan  
LARA -- Unemployment Insurance Agency  
P.O. Box 169  
Grand Rapids, MI 49501-0169

Re: Frank Lucente, Claimant  
SS: [REDACTED]  
Claimant MIN: 0337484032

Dear Agency Representative:

Our office represents Frank Lucente. We sent an appeal letter on Mr. Lucente's behalf to the UIA on or about January 11, 2016. This was denied on January 19, 2016. Mr. Lucente, through counsel, sent an appeal of that decision on January 29, 2016, a copy of that appeal is attached. We have yet to receive a response to that letter.

In both the initial and subsequent appeal letters, Mr. Lucente appealed a "Non-Protestable Summary of Previously (Re) Determined Restitution" with an original mail date given as December 1, 2010, he also appealed the findings shown in two other documents, both captioned "Notice of Redetermination" and both with an original mail date given as January 1, 2010. In short, the UIA had determined that Mr. Lucente had made a misrepresentation to the UIA and collected benefits to which he was not entitled. For this, the UIA required repayment of the overpayment amount \$4,794 and a penalty of \$18,276 (quadruple the overpayment amount). According to UIA files, that amount was changed at some point to a principal (overpayment) of \$6,966 and a penalty of \$26,964. A copy of the original appeal letter is enclosed.

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**GWINN TAURIAINEN PLLC**

Frank Lucente

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Good cause for failing to appeal the UIA's decision is shown where Mr. Lucente never received notice of any of the UIA's findings or determinations – which had been sent to an outdated address. He did not become aware of the UIA's findings until the UIA began to garnish his wages with his employer. Both Michigan and Federal Courts have recognized that equitable tolling of a statute of limitations may be appropriate where a claimant has received inadequate notice, the court has led the plaintiff to believe that he or she has done everything required of him or her; or there has been affirmative misconduct on the part of a defendant lulled the plaintiff into inaction. *Shempert v. Harwick*, 151 F.3d. 793, 798 (1998) quoting *Baldwin County Welcome Ctr. v. Brown*, 486 U.S. 147, 152, 104 S.Ct. 1723, 80 L.Ed.2d 196 (1984); *Mair v Consumer's Power Co.*, 419 Mich 74 (1984).

Mr. Lucente has repaid the entire overpayment amount and has made some payment toward reducing the penalty amount; requiring full payment of the penalty would be contrary to "equity and good conscience" under MCL 421.62(a). Mr. Lucente requests waiver of the penalty because, inter alia, imposition of the penalty is an overly harsh response for the conduct alleged and the circumstances of the Claimant that will result in undue financial hardship, and because Claimant's due process rights were circumscribed where there is no evidence he received any of the documents mailed him by the UIA.

If you have any questions, or if we need to send this letter directly to an administrative law judge to request a hearing, please let us know as soon as possible.

Very truly yours,

**GWINN TAURIAINEN PLLC**  
Daniel A. Gwinn

Enclosures

cc: Frank Lucente

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January 29, 2018

**VIA FACSIMILE ONLY (517) 836-0427**

State of Michigan  
LARA – Unemployment Insurance Agency  
P.O. Box 169  
Grand Rapids, MI 49501-0169

Re: Frank Lucente, Claimant  
SS: [REDACTED]  
Claimant MIN: 0337484032

Dear Agency Representative:

Our office represents Frank Lucente. Mr. Lucente requests a waiver of payment of the \$28,984 penalty against him on grounds of hardship and in the interest of "equity and good conscience" under MCL 421.82(a).

Mr. Lucente's receipt of benefits for which he was later found to be ineligible was not the result of a deliberate act or omission made with fraudulent intent, but of a misunderstanding of the law. Waiver of the penalties is therefore permitted by statute. Mr. Lucente has repaid the \$8,986 in benefits received, and has also begun to pay off the quadruple penalty imposed.

"Equity and good conscience" also require a waiver where it appears both that repayment would be a financial hardship and that, as shown below, due in part to the automation of the Unemployment Insurance Agency's (UIA) process, Mr. Lucente was in ignorance of the redetermination of his benefits and the penalty until several years after that determination had been made, as all notices were sent to addresses that were incorrect or outdated. Although the Agency's original redetermination was made in 2010,

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Frank Lucente

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the Agency's letter advising Mr. Lucente of this fact sent to an address at which Mr. Lucente, who was briefly homeless and consistently transient from 2009 to 2011, did not reside. Mr. Lucente did not become aware of the UIA's redetermination or the quadruple penalty until 2014, when this Agency began garnishing his wages. He did not see a summary of his indebtedness until November 2015, when this Agency sent him a copy of a Non Protestable Summary of Previously (Re) Determined Restitution. By the time Mr. Lucente learned of the Agency's findings, the period for an appeal had expired.

Finally, Mr. Lucente requests waiver of the penalty because imposition of the penalty is an overly harsh response for the conduct alleged and the circumstances of the Claimant.

Mr. Lucente asks this Agency to consider the facts in this case, that demonstrate Mr. Lucente's lack of fraudulent intent, his low income, the uncured misdirection of Agency correspondence resulting in part from Agency automation, and the mechanical imposition of the maximum fine without consideration of the circumstances of the claim or the Claimant, all of which render a requirement that Mr. Lucente pay the quadruple penalty, in full, neither fair nor equitable, under MCL 421.62(a) and require a waiver on the grounds of hardship and simple justice

**FACTS**

The Great Recession of 2008–2010 claimed many victims. Claimant Frank Lucente was one of them.

In July 2008, he lost his job as a maintenance worker with Helm in Highland Park, Michigan and applied for unemployment benefits through Michigan's Unemployment Insurance Agency (UIA), receiving \$382 per week. In February 2009, he made an emergency application for additional benefits. In September 2009, still out of work, he filed for and received extended benefits. But it wasn't nearly enough.

After he lost his job, things went downhill for Claimant. Without a job, he was unable to pay his rent and was evicted. For several months he stayed with family and friends; he became depressed and anxious, and began to suffer from panic attacks – depression and anxiety that continue to plague him. He retreated from the people who would help him. He hit rock bottom in mid-2009, moving into Matt's Salvation Army on 10 Mile and Mound in Warren, before a friend took him in, and allowed him to pay a modest rent on a shared apartment. But it was a short-term solution; Mr. Lucente continued to move from place to place for over a year.

In February 2010 Claimant found a job as an apartment manager with Dart Properties in Mason, Michigan. He began working on February 18, 2010. To receive

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Frank Lucante

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extended benefits, Claimant had been required to file a weekly record of his search for work, listing all employers contacted; he continued to look for work after he started at Dart Properties. Because he would not receive any pay from his new employer until the next pay period, Claimant believed he was still eligible for extended benefits and submitted his weekly record, as usual, for the weeks ending February 20 and February 27. Once he started to receive a pay check from Dart, he stopped submitting a weekly record of his work search and made no additional requests for extended benefits.

However, he continued to certify his eligibility on MARVIN until his weeks of eligibility expired in June 2010, after which he made no further contact with the UIA. He erroneously believed that, once awarded, he was entitled to receive the funds set aside for his benefit year; they were not revocable.

In July 2010, the UIA contacted Claimant's employer and was informed Claimant had been working continuously since February 16, 2010 (Exhibit 1). On July 7, 2010, a Request for Information (Exhibit 2) was mailed to Claimant at a P.O. Box in Centerline. Mr. Lucante had cancelled his P.O. Box rental effective June 11, 2010; he never received the Request for Information. If he had done so, he would not have realized that he was in deep water. The Request for Information failed to state that, should Claimant's answers reveal evidence of fraud, he could face criminal prosecution and/or be held liable for sums equal to four times the amount of the UIA benefits he received after he began to work full time. MCL 421.54.

The UIA followed its Request for Information with a Notice of Redetermination (Exhibit 3) which stated, "You worked full-time for Dart Properties II LLC beginning 2/16/10. As such, you are ineligible for benefits under Section 48 of the MES Act. You were paid, so restitution is required, as shown, under section 62 of the Act." A "recreation" of this letter was sent to Claimant on November 23, 2015. Due to the UIA's conversion in 2013 from its mainframe system to the current system, MIDAS, original copies of determinations and redeterminations prepared on the old system are no longer available. However, the Unemployment Insurance Agency is able to "recreate a determination ... duplicating the exact information, including original mail dates shown on the original document." The recreated document fails to show the address to which the original was sent; the mail date shown on the recreated Notice of Redetermination is January 1, 2010 -- over a month before Claimant found the job with Dart Properties. Another "recreated" Notice of Redetermination (Exhibit 4) -- which also fails to show the address to which it was sent and bearing the same "original mail date" of January 1, 2010 -- would have informed Claimant, had he received it, that his actions were considered intentional.

The copy of Claimant's file sent to this office by the agency on or around November 23, 2015 is incomplete; it contains a Summary of Previously (Re) Determined Restitution

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Frank Lucente

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(Exhibit 5) but not an original Summary of Restitution. It has a request for garnishment directed to one of Claimant's recent employers (Exhibit 6), but not a copy of the request directed to his current employer (Claimant's wages are currently being garnished). Many of the re-created documents show the address to which they were sent on November 23, 2015, but not the address to which they were originally sent.

Although the Agency received no answer to any of its mailings, it apparently continued to the next stage of the process (the file received by this office appears to be incomplete): According to UIA files, the Non-Protestable Summary of Previously (Re) Determined Restitution was sent on December 1, 2010 (the date on the recreated document). The penalty amount on this Summary is listed as \$18,276.00, the principal – the amount Claimant was overpaid – is \$4,784.

In February and March 2012 the Agency sent Claimant two Notice(s) of Payment Due to an address on Denton Street in Clinton Township (Exhibit 7). Claimant did not live at that address; he did not receive the letters. In April and May 2012 the UIA sent a Second Notice of Payment Due and a Final Notice of Payment Due, both to the Centerline P.O. Box (Exhibit 8), an indication that the first two letters may have been returned. Mr. Lucente no longer rented the mailbox; the mail would not have been forwarded. On these documents, the amount due is listed as an overpayment of \$6,866 and a penalty of \$28,984. The interest is listed as "0." No document indicating the reason for the dramatic increase is contained in Claimant's UIA file.

In May 2013, Claimant was let go from his job with Dart Properties.

On October 29, 2013, the UIA sent Claimant a Notice of Garnishment. The address on the duplicate of this letter, contained in the copy of Claimant's UIA file, is the P.O. Box in Centerline. There is no signed copy of this document in the file. In December 2013 the UIA sent payment vouchers to Mr. Lucente; the vouchers were sent to the Centerline P.O. Box. Although Claimant's UIA file does not contain the UIA's full correspondence with Mr. Lucente's employers requesting garnishment, the Agency began garnishing his wages in 2014, shortly after he began to work for Vensure, Inc. A wage garnishment request and order, signed and dated by a Tammy O'Keefe at Vensure on April 23, 2014 is contained in Claimant's UIA file.

Claimant first learned of the findings against him in the summer of 2014, when his then-employer, Vensure, informed him they had received a request for garnishment.

Since August 2014, he has repaid the entire principal, but has been unable to make much of a dent in the penalty. Claimant's current take-home pay is about \$3,000 a month. From this, he must pay \$785 in child support, \$825 in rent, \$431 for a used car, \$285 for car insurance, \$130 in health insurance, \$170 in credit card debt, and roughly \$850 for

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Frank Lucente

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utilities, phone, Internet, gasoline, food and clothing. Claimant has cut his expenses to the bone, and is only just able to make ends meet; the additional burden of the UIA penalty prevents him from moving forward and becoming the responsible citizen he was before he lost his job in 2008.

**ARGUMENT**

**I. Mr. Lucente should not be required to pay a quadruple penalty and waiver is proper where his actions in continuing to certify on MARVIN were based on a mistaken understanding of his benefit eligibility.**

From late February to June 2010 Claimant continued to certify his eligibility to receive benefits and continued to receive benefits from the UIA, despite the fact he was working full-time. Claimant, suffering from severe depression and anxiety in 2010 after two years without work, believed that the benefits, once awarded, belonged to him. He did not realize – as he should have – that his benefits ended when he began to work full time.

When Claimant received the money from the UIA, he believed it was "his" and accepted it under a claim of right. His intent was not to defraud, but to retain control of something that belonged to him. As such, his actions – while ill-advised and ill-informed – lacked the necessary element of intent to qualify as fraud. Thus, waiver may be proper under MCL 421.62 as the incorrect information provided to the UIA was not made with fraudulent intent.

**II. Mr. Lucente should not be required to pay a quadruple penalty, and waiver is proper in the interest of equity where no consideration of the facts of the alleged offense or the circumstances of the offender were made before the maximum penalty was imposed and where a quadruple penalty is contrary to "equity and good conscience" under MCL 421.62a.**

The statute outlining the penalties for a making a "knowing false statement or representation or the knowing and willful failure to disclose a material fact" in order to receive unemployment benefits requires restitution of the full amount received as a result of this fraud. However, the imposition of additional penalties is permissive; the statute states that the agency *may* also recover damages equal to 4 times "the amount obtained by the false statement. MCL 421.54(b)(II) (emphasis added). The Agency may also refer the case to the prosecutor, who may then seek recovery of the overpayment amount

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Frank Lucente  
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(restitution) and also request imposition of a term of prison for not more than one year, or may require the performance of up to 2,080 hours (no more than one year) of community service. MCL 421.54(b)(iii)(A)(i) and (ii).

Assuming, for the sake of argument, that Mr. Lucente acted with fraudulent intent, the amount of the penalty is out of proportion to the crime committed and its automatic imposition without consideration of Mr. Lucente's circumstances not only violates the basic tenets of justice but also amounts to discrimination based on wealth violating the equal protection clause and, further, is an excessive fine, contrary to the Eighth Amendment.

Mr. Lucente works in maintenance. His income is above the federal poverty level, but it is only just above the bottom economic quintile. While paying fines totaling over \$30,000 might be unwelcome to a white collar professional, to a man like Mr. Lucente it is a financial disaster. The statute clearly recognizes that the ability of the Claimant to pay a penalty is a factor that must be considered before the UIA demands payment of quadruple the restitution amount. It is because this factor must be considered that the statute gives the Agency discretion on whether or not to seek imposition of a penalty, and, if imposed, the size of the penalty. It is why the prosecutor may ask that a Claimant found guilty of making misleading statements to the UIA serve a prison term, or simply serve community service. And it is a factor that was not considered in this case.

The automated system currently used by the UIA, while allowing the agency to process more claims more quickly, does not have the ability to review the particular facts of each case and each Claimant. This inability sometimes results, as it has in this case, in a penalty that is effectively a sentence to life on the financial edge, and violates the spirit and purpose of the Michigan Employment Security Act, "to safeguard the general welfare by dispensing benefits to ameliorate the disastrous effects of involuntary unemployment." *Schultz v Oakland County*, 187 Mich App 96, 102-103 (1991). Mr. Lucente fully experienced these disastrous effects; in the depth of that disaster is the origin of his wishful belief that he could continue to receive benefits while working.

A court, when imposing sentence in a criminal case, should ensure the sentence is "tailored to the particular circumstances of the case and the offender in an effort to balance both society's need for protection and its interest in maximizing the offender's rehabilitative potential." *People v McFarlin*, 389 Mich 557, 574 (1973). In the present case, no consideration has been made of Mr. Lucente's particular circumstances. As for reformation, since he learned of the actions taken against him, Mr. Lucente has not only been made aware how misguided was his belief that he could continue to collect benefits while working, but has paid a high price for his actions — which resulted in rendering him destitute when he was again unemployed — and has repaid the state for the money he

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Frank Lucente

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wrongly received. He got the message. To require payment of the penalty will prevent Mr. Lucente from moving forward and thus impede his "rehabilitative potential."

In the criminal context, the Michigan legislature recognized more than 10 years ago with Public Acts 665, 666 and 670 of 2002, that placing a defendant on probation for life is itself an injustice, a sentence that restricts a defendant's reasonable life choices far beyond that merited by the misconduct and often needlessly requires continued supervision. The penalty here is analogous to lifetime probation – it will continue long after Mr. Lucente has "learned his lesson" and, like lifetime probation, will operate as a continual bar to his full participation in society.

The penalty imposed here not only failed to consider Mr. Lucente's ability to pay, but is also out of proportion to the crime committed. If Claimant had committed a *larceny* of an item valued between \$1,000 and \$20,000, the maximum sentence he could face would be five years in prison or a fine of "not more than \$10,000 or three times the value of the property stolen." MCL 750.356(3)(a). Here, where the property taken was that which the state was willing to award him, as long as he was out of work, he is subject to a penalty of *four times* the amount he received, plus interest – in addition to repayment of the original amount. The punishment for this crime – a crime against which he was unable to defend himself in court, a right that would have been his if he had stolen money from a business or someone's home – will be unending. Claimant does not have the resources to pay \$125 every month, a repayment that would take him decades.

For these reasons, Mr. Lucente ask that this Agency grant him waiver of the remaining penalty and accept the full restitution Mr. Lucente has already paid and his payments toward the penalty as payment in full and consider the matter closed.

**III. The penalty against Mr. Lucente must be waived where Mr. Lucente was denied his due process rights to present facts in defense or mitigation where he never received notice of the UIA's finding that he had been ineligible for the benefits he received, its finding he had been guilty of fraud, and its decision to demand full restitution and a quadruple penalty until several years after the conduct alleged.**

The United States government, through the Department of Labor, provides monetary grants to states, including Michigan, in support of state unemployment insurance programs. Federal law establishes minimum due process requirements for states receiving these grants. As outlined in 28 USC Section 6402(f)(3), states (like Michigan) that accept funding for unemployment programs from the federal government are barred from pursuing collection of unemployment compensation debts, including penalties, through collection actions and the interception of federal income tax refunds,

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Frank Lucente

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unless certain steps are taken with regard to notice, consideration of evidence, and a fair opportunity to be heard. States must provide specific notice, afford claimants at least 60 days to present evidence and consider evidence from the claimant in determining whether the alleged fraud or other overpayment debt can be enforced.

These minimum due process requirements must be afforded to all claimants, regardless of whether or not the claimants are ultimately determined to be "guilty" or "innocent" of obtaining UIA benefits through fraud or other improper means.

At the time the UIA first wrote Claimant, requesting information, his benefit year had expired. Mr. Lucente believed his relationship with the UIA was at an end and he therefore had no obligation to keep the UIA apprised of his current address. Once a claimant's benefits have been exhausted, he or she has no obligation to inform the UIA of current address or any subsequent employment unless the claimant requests additional benefits. Mr. Lucente had no reason to keep the Agency informed of his address or employment.

Information sent to Mr. Lucente at the P.O. Box after June 11, 2010 (claimant can provide the UIA verification that the P.O. Box service had been stopped in June 2010) would have been returned to sender. The Agency failed to provide Mr. Lucente adequate notice of the actions taken against him; its finding that he was guilty of fraud and its decision to impose the maximum financial punishment for that fraud denied him his due process rights.

During the time the Agency mailed Claimant its request for information, its findings, its restitution summary, demands for payment and request for garnishment, Mr. Lucente had no fixed address, and did not receive any of these letters. The Agency was, or should have been, aware that its communications were not being received. Claimant can demonstrate he was not at the addresses to which the UIA sent these communications; the majority of these letters would have been returned to the Agency.

Specific notice requires more than sending a letter to a party's last known address, as shown by court rules requiring service by registered mail or personal service, MCR 2.105-106.

Where there has been no notice, the UIA cannot move from a Request for Information to a Final Payment Request. To do so, as here, denies the claimant his or her right to present evidence, and denies the UIA its right to consider this evidence, and to consider facts in mitigation of the conduct of which it complains and facts which would support a finding that a quadruple penalty is unreasonable given the circumstances of this Claimant.

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Frank Lucente

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Where a UIA employee might have noted Mr. Lucente's apparent silence in response to its requests for information, and then for payment, no employee was given the opportunity to consider the issue: The Agency relies on an automated system, MIDAS. While this system enables the Agency to coordinate collection procedures with employers, other state agencies and the federal government and helps alert the Agency when there is information that might have some bearing on a claimant's qualification for benefits, its automated nature results in claimants being denied due process rights.

MIDAS does not provide claimants with specific notice of the basis for the UIA's suspicion of fraud or other culpable conduct. MIDAS does not include or allow for an actual fact-based adjudication of whether the claimant engaged in culpable disqualifying conduct; it does not allow a claimant 60 days in which to present evidence, and does not include or allow for consideration of evidence by the Agency. MIDAS, unlike an actual Agency employee, does not *think*; it cannot reason or question. It cannot respond to letters, it cannot weigh evidence, it cannot consider the particular circumstances of any claimant alleged to have been guilty of misrepresentation. It will continue from Step A of a process it initiates to Step B, then to Step C and then to a pre-set punishment without input from the claimant whose life will be affected by its automated findings.

The Agency erred in its reliance on its automated system, denying Mr. Lucente his due process rights. The Agency also erred, denying Mr. Lucente his right to review and question its findings, when it failed to provide him a complete copy of his UIA file.

Where Mr. Lucente was denied his due process rights by the Agency's failure to provide notice, to consider facts in mitigation, and to provide him with access to his complete file, the Agency's findings and the imposition of the maximum financial penalty are without support. Mr. Lucente, however, now understands that he was incorrect in his belief that he was entitled to the benefits he received while working; he acknowledges the Agency's right to reimbursement. However, where he was denied the opportunity to demonstrate that the penalty should have been waived because he lacked the requisite intent, and where he was denied the opportunity to present evidence that the quadruple penalty was excessive given his financial circumstances, and where he was denied the right to an appeal by a process that found him time-barred before he had even learned of the monetary penalties against him, that penalty must be waived.

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Frank Lucente  
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If you have any questions, please call.

Very truly yours,

GWINN TAURIAINEN PLLC



Daniel A. Gwinn

Enclosures

cc: Frank Lucente

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**MIDAS**

midas

Log On

**Case** 

Case: 9-000-201-010 Nonmonetary Issue

Applicant Challenged BY

Search

FRANK LUCENTE: \*4437

Case: 9-000-201-010  
Nonmonetary Issue

New Manager












Notifications

**Nonmonetary Issue**

Work Date: 26-Jul-2010 Ed

**Appeal Scheduled**Claim # C3300005-4 FI  
17371 JONES BROOKS CIR APT 100 CLINTON TOWNSHIP

SUMMARY ATTEMPTS CASE LEGAL STAGES RECONSIDERATION ATTEMPTS REAS RECONSIDERATION CORRESPONDENCE

LOG	Source	Add Received	Action	Hide
Action	When	Completed		
 Created	Opened	15-Jan-2010		
 Staged	Protest Received	15-Jan-2010		
 Staged	Redetermination Denied	15-Jan-2010		
 Letter	UA 1077 - Denial of Reconsider - L0025857875	15-Jan-2010		
 Staged	Issue Closed, Level 2	15-Jan-2010		
 Staged	Redetermination Denied	19-May-2010		
 Staged	Appeal Received	19-May-2010		
 Staged	Appeal Submitted	19-May-2010		
 Letter	UA 1302 - Legacy (re) Denial - L0029094784	20-May-2010		
 Letter	UA 1301 - Legacy Over Denial - L0029722908	27-May-2010		
 Staged	Appeal Scheduled	31-May-2010		

**CURRENT STAGE ALERTS****NEXT STAGE**Appeal Result  
Appeal Scheduled**NONMONETARY ISSUE**

Nonmonetary Issue

batch 31-May-2010 14 of 14

MANAGE CASE ISSUES LEGACY DATA MISREPRESENTATION PROTESTS AND APPEALS

DETAILS ASSOCIATES

Summary Support Research  
(Summary)**APPEAL INFORMATION**

Protest/Appell Type	Appeal	Appellant	Claimant	Date Filed	25-Jan-2010
Original Issue	Misrepresentation	Appeal Closing Issue	Misrepresentation		
Original Determination Date	19-Jan-2010	Appeal Issued			
Original Period From	20-Feb-2010	Appeal Period From			
Original Period To	19-Jun-2010	Appeal Period To			
Original Separation Date		Appeal Separation Date			
Prior Result	Disqualified	Result			
Restitution From Appeal	<input type="checkbox"/>	Outcome			
		Modified Code			

**Appellant Comments**No New Information Indicated on MIVAN ☐Late Appeal ☐No Initial Employer Paid Finding Response ☐Good Cause for Lateness ☐**HEARING INFORMATION**

Docket Number	18-014572	Judge's Name	M WAKELEY	Manually Scheduled <input type="checkbox"/>
Hearing Date	21-Jan-2010	Hearing Time	10:30 AM	Support Notice of Hearing Letter <input type="checkbox"/>
Hearing Type	In-Person	Rehearing Number	0	
Hearing Building Name	MAHS DETROIT 2ND FLOOR			
Hearing Building Additional	CADILLAC PLACE			
Hearing Street	3029 W. GRAND BLVD			
Hearing City	DETROIT			
Hearing State	MICHIGAN			
Hearing Zip	48203-8202			
Hearing Phone	1-313-458-2700			
Hearing Fax	1-313-458-2707			
Hearing Message	WHETHER OR NOT APPELLANT CAN ESTABLISH GOOD CAUSE FOR R WHETHER CLAIMANT INTENTIONALLY MADE A FALSE STATEMENT, MATERIAL INFORMATION TO OBTAIN BENEFITS, CLAIMANT MUST PAY RESTITUTION/DAMAGES TO AGENCY UNDER MISREPRESENTATION. SECTIONS THAT MAY APPLY: 62(A), 62(B) WITNESS LIST AND DOCUMENTARY EVIDENCE TO OTHER PARTIES BEFORE A FRAUD HEARING. PER R 752.11400(2). **DUE TO TN PARTIES MAY REQUEST TELEPHONE			

08011640051076



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**FACSIMILE TRANSMITTAL**

TO: Hon. Michael Wakeley FAX NO: 517-763-0136  
 FROM: Gwin Tauriainen PLLC DATE: 07-06-16  
 PAGES: 63 Plus Cover

**MESSAGE:**

Appeal + documents  
Lucente - Appeal # 16 014572

\*\*\*\*\*  
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July 6, 2018

**VIA FACSIMILE (517) 763-0136**

Hon. Michael Wakeley  
Michigan Administrative Hearing System  
7<sup>th</sup> Floor  
3024 W. Grand Blvd.  
Suite 7-450  
Detroit, MI 48202qState of Michigan

Re: Frank Lucente, Claimant  
SS: XXX-XX-4837  
Appeal #: 18-014572  
Case#: 6281815

Your Honor:

Our office represents Frank Lucente. Mr. Lucente requests a waiver of payment of the \$26,984 penalty against him on grounds of hardship and in the interest of "equity and good conscience" under MCL 421.62(a). Attached is a copy of Mr. Lucente's appeal, with documents in support.

Mr. Lucente's receipt of benefits to which he was later found to be ineligible was not the result of a deliberate act or omission made with fraudulent intent, but of a misunderstanding of the law. Waiver of the penalties is therefore permitted by statute. Mr. Lucente has repaid the \$6,986 in benefits received, and has also begun to pay off the quadruple penalty imposed.

"Equity and good conscience" also require a waiver where it appears both that repayment would be a financial hardship and that, as shown below, due in part to the automation of the Unemployment Insurance Agency's (UIA) process, Mr. Lucente was in



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ignorance of the redetermination of his benefits and the penalty until several years after that determination had been made, as all notices were sent to addressees that were incorrect or outdated. Although the Agency's original redetermination was made in 2010, the Agency's letter advising Mr. Lucente of this fact was sent to an address at which Mr. Lucente, who was briefly homeless and consistently transient from 2009 to 2011, did not reside. Mr. Lucente did not become aware of the UIA's redetermination or the quadruple penalty until 2014, when this Agency began garnishing his wages. He did not see a summary of his indebtedness until November 2015, when this Agency sent him a copy of a Non Protestable Summary of Previously (Re) Determined Restitution. By the time Mr. Lucente learned of the Agency's findings, the period for an appeal had expired.

Finally, Mr. Lucente requests waiver of the penalty because imposition of the penalty is an overly harsh response for the conduct alleged and the circumstances of the Claimant.

Mr. Lucente asks this Agency to consider the facts in this case, that demonstrate Mr. Lucente's lack of fraudulent intent, his low income, the uncured misdirection of Agency correspondence resulting in part from Agency automation, and the mechanical imposition of the maximum fine without consideration of the circumstances of the claim or the Claimant, all of which render a requirement that Mr. Lucente pay the quadruple penalty, in full, neither fair nor equitable, under MCL 421.62(a) and require a waiver on the grounds of hardship and simple justice.

#### FACTS

The Great Recession of 2008-2010 claimed many victims. Claimant Frank Lucente was one of them.

In July 2008, he lost his job as a maintenance worker with Helm in Highland Park, Michigan and applied for unemployment benefits through Michigan's Unemployment Insurance Agency (UIA), receiving \$362 per week. In February 2009, he made an emergency application for additional benefits. In September 2009, still out of work, he filed for and received extended benefits (Exhibit 1). But it wasn't nearly enough.

After he lost his job, things went downhill for Claimant. Without a job, he was unable to pay his rent and was evicted. For several months he stayed with family and friends; he became depressed and anxious, and began to suffer from panic attacks - depression and anxiety that continue to plague him. He retreated from the people who would help him. He hit rock bottom in mid-2009, moving into Matt's Salvation Army on 10 Mile and Mound in Warren, before a friend took him in, and allowed him to pay a modest rent on a shared apartment. But it was a short-term solution; Mr. Lucente continued to move from place to place for over a year.



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In February 2010 Claimant found a job as an apartment manager with Dart Properties in Mason, Michigan. He began working on February 16, 2010. To receive extended benefits, Claimant had been required to file a weekly record of his search for work, listing all employers contacted; he continued to look for work after he started at Dart Properties. Because he would not receive any pay from his new employer until the next pay period, Claimant believed he was still eligible for extended benefits and submitted his weekly record, as usual, for the weeks ending February 20 and February 27. Once he started to receive a pay check from Dart, he stopped submitting a weekly record of his work search.

However, he continued to certify his eligibility on MARVIN until his weeks of eligibility expired in June 2010, after which he made no further contact with the UIA. He erroneously believed that once awarded, he was entitled to receive the remaining funds granted him as extended benefits – they were not revocable. He thought the UIA would inform him if there was any problem with his continued receipt of benefits. The UIA was aware, he thought, that he was no longer looking for work.

In July 2010, the UIA contacted Claimant's employer and was informed Claimant had been working continuously since February 16, 2010 (Exhibit 3). On July 7, 2010, a Request for Information (Exhibit 4) was mailed to Claimant at a P.O. Box in Centerline. Mr. Lucente had cancelled his P.O. Box rental effective June 11, 2010; he never received the Request for Information. If he had done so, he would not have realized that he was in deep water: The Request for Information failed to state that, should Claimant's answers reveal evidence of fraud, he could face criminal prosecution and/or be held liable for sums equal to four times the amount of the UIA benefits he received after he began to work full time. MCL 421.54.

The UIA followed its Request for Information with a Notice of Redetermination (Exhibit 5) which stated, "You worked full-time for Dart Properties II LLC beginning 2/16/10. As such, you are ineligible for benefits under Section 48 of the MES Act. You were paid, so restitution is required, as shown, under section 62 of the Act." A "recreation" of this letter was sent to Claimant on November 23, 2015. Due to the UIA's conversion in 2013 from its mainframe system to the current system, MIDAS, original copies of determinations and redeterminations prepared on the old system are no longer available. However, the Unemployment Insurance Agency is able to "recreate a determination ... duplicating the exact information, including original mail dates shown on the original document." The recreated document fails to show the address to which the original was sent; the mail date shown on the recreated Notice of Redetermination is January 1, 2010 – over a month *before* Claimant found the job with Dart Properties. Another "recreated" Notice of Redetermination (Exhibit 6) – which also fails to show the address to which it



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was sent and bearing the same "original mail date" of January 1, 2010 — would have informed Claimant, had he received it, that his actions were considered intentional.

The copy of Claimant's file sent to this office by the agency on or around November 23, 2015 is incomplete; it contains a Summary of Previously (Re) Determined Restitution (Exhibit 7) but not an original Summary of Restitution. It has a request for garnishment directed to one of Claimant's recent employers (Exhibit 8), but not a copy of the request directed to his current employer (Claimant's wages are currently being garnished). Many of the re-created documents show the address to which they were sent on November 23, 2015, but not the address to which they were originally sent.

Although the Agency received no answer to any of its mailings, it apparently continued to the next stage of the process (the file received by this office appears to be incomplete): According to UIA files, the Non-Protestable Summary of Previously (Re) Determined Restitution was sent on December 1, 2010 (the date on the recreated document). The penalty amount on this Summary is listed as \$18,276.00, the principal — the amount Claimant was overpaid — is \$4,784.

In February and March 2012 the Agency sent Claimant two Notice(s) of Payment Due to an address on Denton Street in Clinton Township (Exhibit 9). Claimant did not live at that address; he did not receive the letters. In April and May 2012 the UIA sent a Second Notice of Payment Due and a Final Notice of Payment Due, both to the Centerline P.O. Box (Exhibit 10), an indication that the first two letters may have been returned. Mr. Lucente no longer rented the mailbox; the mail would not have been forwarded. On these documents, the amount due is listed as an overpayment \$6,966 and a penalty of \$26,964. The interest is listed as "0." No document indicating the reason for the dramatic increase is contained in Claimant's UIA file.

In May 2013, Claimant was let go from his job with Dart Properties.

On October 29, 2013, the UIA sent Claimant a Notice of Garnishment (Exhibit 11). The address on the duplicate of this letter, contained in the copy of Claimant's UIA file, is the P.O. Box in Centerline. There is no signed copy of this document in the file. In December 2013 the UIA sent payment vouchers to Mr. Lucente; the vouchers were sent to the Centerline P.O. Box. Although Claimant's UIA file does not contain the UIA's full correspondence with Mr. Lucente's employers, requesting garnishment, the Agency began garnishing his wages in 2014, shortly after he began to work for Vensure Inc. A wage garnishment request and order, signed and dated by a Tammy O'Keefe at Vensure on April 23, 2014 is contained in Claimant's UIA file. Additional requests for garnishment payments were made later that year — and they continued to be made to Vensure, even



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after being informed that Mr. Lucente, who had been laid off in September 2014, had no wages to report after that date (Exhibit 12).

Claimant first learned of the findings against him in the summer of 2014, when his then-employer, Vensure, informed him they had received a request for garnishment.

Since August 2014, he has repaid the entire principal; but has been unable to make much of a dent in the penalty. Claimant's current take-home pay is about \$3,000 a month. From this, he must pay \$785 in child support, \$625 in rent, \$431 for a used car, \$285 for car insurance, \$130 in health insurance, \$170 in credit card debt, and roughly \$850 for utilities, phone, Internet, gasoline, food and clothing. Claimant has cut his expenses to the bone, and is only just able to make ends meet; the additional burden of the UIA penalty prevents him from moving forward and becoming the responsible citizen he was before he lost his job in 2008.

Claimant, through counsel, wrote a letter to the UIA on or about January 16, 2016, requesting waiver of the penalty. That request was denied as untimely in a Denial of Request for Reconsideration or Redetermination dated January 29, 2016.

It is from that erroneous finding that Claimant now appeals.

**ARGUMENT**

**I. Mr. Lucente's appeal is not time-barred where he never received the Unemployment Insurance Agency's Redetermination of Eligibility or requests for payment, etc., because the UIA sent its correspondence to an outdated address.**

The UIA has made findings that Mr. Lucente deliberately misrepresented facts about his employment in order to receive benefits to which he was not entitled and further found that a quadruple penalty was appropriate. The problem is, Mr. Lucente was never apprised of those findings and, to date, has not been afforded an opportunity to appeal those findings.

Good cause for failing to appeal the UIA's decision is shown where Mr. Lucente never received notice of any of the UIA's findings. He did not become aware of the UIA's findings until the UIA began to garnish his wages with his employer. Both Michigan and Federal Courts have recognized that equitable tolling of a statute of limitations may be appropriate where a claimant has received inadequate notice, the court has led the plaintiff to believe that he or she has done everything required of him or her, or there has been affirmative misconduct on the part of a defendant that lulled the plaintiff into inaction. *Shempert v. Harwick*, 151 F.3d. 793, 798 (1998) quoting *Baldwin County Welcome Ctr. v.*



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*Brown*, 468 U.S. 147, 152, 104 S.Ct. 1723, 80 L.Ed.2d 198 (1984); *Mair v Consumer's Power Co.*, 419 Mich 74 (1984).

Under Section 32a(2) of the MES, the Agency may reconsider a prior determination or redetermination after the 30-day period has expired, if such request is made "within 1 year from the date of mailing [to a correct address] or personal service of the original determination on the disputed issue."

Mr. Lucente's appeal is not barred under the statute. He has yet to be afforded the opportunity to appeal the UIA's findings against him.

**II. Mr. Lucente should not be required to pay a quadruple penalty and waiver is proper where his actions in continuing to certify on MARVIN were based on a mistaken understanding of his benefit eligibility.**

From late February to June 2010 Claimant continued to certify his eligibility to receive benefits and continued to receive benefits from the UIA, despite the fact he was working full-time. Claimant, suffering from severe depression and anxiety in 2010 after two years without work, believed that the benefits, once awarded, belonged to him. He did not realize – as he should have – that his benefits ended when he began to work full time.

When Claimant received the money from the UIA, he believed it was "his" and accepted it under a claim of right. His intent was not to defraud, but to retain control of something that belonged to him. As such, his actions – while ill-advised and ill-informed – lacked the necessary element of intent to qualify as fraud. Thus, waiver may be proper under MCL 421.62 as the incorrect information provided to the UIA was not made with fraudulent intent.

**III. Mr. Lucente should not be required to pay a quadruple penalty, and waiver is proper in the interest of equity where no consideration of the facts of the alleged offense or the circumstances of the offender were made before the maximum penalty was imposed and where a quadruple penalty is contrary to "equity and good conscience" under MCL 421.62a.**

The statute outlining the penalties for a making a "knowing false statement or representation or the knowing and willful failure to disclose a material fact" in order to receive unemployment benefits requires restitution of the full amount received as a result of this fraud. However, the imposition of additional penalties is permissive; the statute states that the agency *may* also recover damages equal to 4 times "the amount obtained by the false statement. MCL 421.54(b)(ii) (emphasis added). The Agency may also refer the case to the prosecutor, who may then seek recovery of the overpayment amount



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(restitution) and also request imposition of a term of prison for not more than one year, or may require the performance of up to 2,080 hours (no more than one year) of community service. MCL 421.54(b)(iii)(A)(i) and (ii).

Assuming, for the sake of argument, that Mr. Lucente acted with fraudulent intent, the amount of the penalty is out of proportion to the crime committed and its automatic imposition without consideration of Mr. Lucente's circumstances not only violates the basic tenets of justice but also amounts to discrimination based on wealth violating the equal protection clause and, further, is an excessive fine, contrary to the Eighth Amendment.

Mr. Lucente works in maintenance. His income is above the federal poverty level, but he is only just above the bottom economic quintile. While paying fines totaling over \$30,000 might be unwelcome to a white collar professional, to a man like Mr. Lucente it is a financial disaster. The statute clearly recognizes that the ability of the Claimant to pay a penalty is a factor that must be considered before the UIA demands payment of quadruple the restitution amount. It is because this factor must be considered that the statute gives the Agency discretion on whether or not to seek imposition of a penalty, and, if imposed, the size of the penalty. It is why the prosecutor may ask that a Claimant found guilty of making misleading statements to the UIA serve a prison term, or simply serve community service. And it is a factor that was not considered in this case.

The automated system currently used by the UIA, while allowing the agency to process more claims more quickly, does not have the ability to review the particular facts of each case and each Claimant. This inability sometimes results, as it has in this case, in a penalty that is effectively a sentence to life on the financial edge, and violates the spirit and purpose of the Michigan Employment Security Act, "to safe guard the general welfare by dispensing benefits to ameliorate the disastrous effects of involuntary unemployment." *Schultz v Oakland County*, 187 Mich App 96, 102-103 (1991). Mr. Lucente fully experienced these disastrous effects; in the depth of that disaster is the origin of his wishful belief that he could continue to receive benefits while working.

A court, when imposing sentence in a criminal case, should ensure the sentence is "tailored to the particular circumstances of the case and the offender in an effort to balance both society's need for protection and its interest in maximizing the offender's rehabilitative potential." *People v McFarlin*, 389 Mich 557, 574 (1973). In the present case, no consideration has been made of Mr. Lucente's particular circumstances. As for reformation, since he learned of the actions taken against him, Mr. Lucente has not only been made aware how misguided was his belief that he could continue to collect benefits while working, but has paid a high price for his actions – which resulted in rendering him destitute when he was again unemployed – and has repaid the state for the money he



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wrongly received. He got the message. To require payment of the penalty will prevent Mr. Lucente from moving forward and thus impede his "rehabilitative potential."

In the criminal context, the Michigan legislature recognized more than 10 years ago with Public Acts 665, 666 and 670 of 2002, that placing a defendant on probation for life is itself an injustice, a sentence that restricts a defendant's reasonable life choices far beyond that merited by the misconduct and often needlessly requires continued supervision. The penalty here is analogous to lifetime probation -- it will continue long after Mr. Lucente has "learned his lesson" and, like lifetime probation, will operate as a continual bar to his full participation in society.

The penalty imposed here not only failed to consider Mr. Lucente's ability to pay, but is also out of proportion to the crime committed. If Claimant had committed a *larceny* of an item valued between \$1,000 and \$20,000, the maximum sentence he could face would be five years in prison or a fine of "not more than \$10,000 or three times the value of the property stolen." MCL 750.356(3)(a). Here, where the property taken was that which the state was willing to award him, as long as he was out of work, he is subject to a penalty of *four times* the amount he received, plus interest -- in addition to repayment of the original amount. The punishment for this crime -- a crime against which he was unable to defend himself in court, a right that would have been his if he had stolen money from a business or someone's home -- will be unending. Claimant does not have the resources to pay \$125 every month, a repayment that would take him decades.

For these reasons, Mr. Lucente ask that this Agency grant him waiver of remaining penalty and accept the full restitution Mr. Lucente has already paid and his payments toward the penalty, as payment in full and consider the matter closed.

**IV. The penalty against Mr. Lucente must be waived where Mr. Lucente was denied his due process rights to present facts in defense or mitigation where he never received notice of the UIA's finding that he had been ineligible for the benefits he received, its finding he had been guilty of fraud, and its decision to demand full restitution and a quadruple penalty until several years after the conduct alleged.**

The United States government, through the Department of Labor, provides monetary grants to states, including Michigan, in support of state unemployment insurance programs. Federal law establishes minimum due process requirements for states receiving these grants. As outlined in 28 USC Section 6402(f)(3), states (like Michigan) that accept funding for unemployment programs from the federal government are barred from pursuing collection of unemployment compensation debts, including penalties, through collection actions and the interception of federal income tax refunds,



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unless certain steps are taken with regard to notice, consideration of evidence, and a fair opportunity to be heard. States must provide specific notice, afford claimants at least 60 days to present evidence and consider evidence from the claimant in determining whether the alleged fraud or other overpayment debt can be enforced.

These minimum due process requirements must be afforded to all claimants, regardless of whether or not the claimants are ultimately determined to be "guilty" or "innocent" of obtaining UIA benefits through fraud or other improper means.

At the time the UIA first wrote Claimant, requesting information, his benefit year had expired. Mr. Lucente believed his relationship with the UIA was at an end and he therefore had no obligation to keep the UIA apprised of his current address. Once a claimant's benefits have been exhausted, he or she has no obligation to inform the UIA of current address or any subsequent employment unless the claimant requests additional benefits. Mr. Lucente had no reason to keep the Agency informed of his address or employment.

Information sent to Mr. Lucente at the P.O. Box after June 11, 2010 would have been returned to sender. The Agency failed to provide Mr. Lucente adequate notice of the actions taken against him, its finding that he was guilty of fraud and its decision to impose the maximum financial punishment for that fraud and denied him his due process rights.

During the time the Agency mailed Claimant its request for information, its findings, its restitution summary, demands for payment and request for garnishment, Mr. Lucente had no fixed address, and did not receive any of these letters. The Agency was, or should have been, aware that its communications were not being received. Claimant can demonstrate he was not at the addresses to which the UIA sent these communications; the majority of these letters would have been returned to the Agency.

Specific notice requires more than sending a letter to a party's last known address, as shown by court rules requiring service by registered mail or personal service, MCR 2.105-106.

Where there has been no notice, the UIA cannot move from a Request for Information to a Final Payment Request. To do so, as here, denies the claimant his or her right to present evidence, and denies the UIA its right to consider this evidence, and to consider facts in mitigation of the conduct of which it complains and facts which would support a finding that a quadruple penalty is unreasonable given the circumstances of this Claimant.

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Where a UIA employee might have noted Mr. Lucente's apparent silence in response to its requests for information, and then for payment, no employee was given the opportunity to consider the issue: The Agency relies on an automated system, MiDAS. While this system enables the Agency to coordinate collection procedures with employers, other state agencies and the federal government and helps alert the Agency when there is information that might have some bearing on a claimant's qualification for benefits, its automated nature results in claimants being denied due process rights.

MIDAS does not provide claimants with specific notice of the basis for the UIA's suspicion of fraud or other culpable conduct. MIDAS does not include or allow for an actual fact-based adjudication of whether the claimant engaged in culpable disqualifying conduct; it does not allow a claimant 60 days in which to present evidence, and does not include or allow for consideration of evidence by the Agency. MIDAS, unlike an actual Agency employee, does not *think*; it cannot reason or question. It cannot respond to letters, it cannot weigh evidence, it cannot consider the particular circumstances of any claimant alleged to have been guilty of misrepresentation. It will continue from Step A of a process it initiates to Step B, then to Step C and then to a pre-set punishment without input from the claimant whose life will be affected by its automated findings.

The Agency erred in its reliance on its automated system, denying Mr. Lucente his due process rights. The Agency also erred, denying Mr. Lucente his right to review and question its findings, when it failed to provide him a complete copy of his UIA file.

Where Mr. Lucente was denied his due process rights by the Agency's failure to provide notice, to consider facts in mitigation, and to provide Claimant with access to his complete file, the Agency's findings and the imposition of the maximum financial penalty are without support. Mr. Lucente, however, now understands that he was incorrect in his belief that he was entitled to the benefits he received while working; he acknowledges the Agency's right to reimbursement. However, where he was denied the opportunity to demonstrate both that the penalty should have been waived because he lacked the requisite intent, and where he was denied the opportunity to present evidence that the quadruple penalty was excessive given his financial circumstances, and where he was denied the right to an appeal by a process that found him time-barred before he had even learned of the monetary penalties against him, that penalty must be waived.

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Frank Lucente  
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If you have any questions, please call.

Very truly yours,

GWINN TAURIAINEN PLLC



Daniel A. Gwinn

Enclosures

cc: Frank Lucente  
Dart Properties II LLC  
UIA Fraud Investigation

Page 12 of 68 [98012640052030] 7/8/2018 3:38:30 PM [Eastern Daylight Time] From: 248-247-3310

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# EXHIBIT 1

## Applications for Extended Benefits

## State of Michigan

### DLEG - Unemployment Insurance Agency Extended Benefits (EB) Application

<b>EB Claimant Information</b>	
Frank Lucente [REDACTED] 4637]	
PO BOX 3083	
CENTER LINE, MI48015-0083	
Claim BYB:	07/27/2008
Extension Effective Date:	09/13/2009
Date Filed:	09/15/2009
Claim Type:	New
Confirmation Number:	EB46370727200809152009
<b>Since you last Claimed Benefits</b>	
Have you started receiving retirement benefits since your last Unemployment payment?	No
Is your current name or address DIFFERENT THAN the name and address displayed above in Identifying Information?	No
Have you started training or attending school since your last Unemployment payment?	No
Are you currently receiving UI benefits from another state (other than Michigan) or Canada?	No
<b>Citizenship</b>	
Are you a citizen of the USA? Yes	
<b>Last Employer Information</b>	
Helm Inc	
14310 Hamilton	
Highland Park, MI48203	
Plant or Location worked:	
Position Title:	Maintenance Personnel
Type of Wage:	Hourly
Was Social Security taken out of your pay?	Yes
First Date Worked:	04/25/2007
Last Date Worked:	06/30/2008
Reason for Separation:	Laid Off
Do you expect to return to work with this employer or a previous employer?	No
Expected return to work date:	
What is your occupation?	Building and Grounds Cleaning and Maintenance

I certify that all the information submitted by me on this form is true and correct to the best of my knowledge and belief. I UNDERSTAND THAT THE LAW PROVIDES PENALTIES OF FINES, IMPRISONMENT AND/OR COMMUNITY SERVICE FOR FALSE STATEMENTS TO SECURE BENEFITS.



To file

U1A1913U  
(Rev. 7-06)State of Michigan  
Department of Labor & Economic Growth  
UNEMPLOYMENT INSURANCE AGENCYAuthorized by  
MCL 42.11, et seq.APPLICATION FOR EMERGENCY  
UNEMPLOYMENT COMPENSATION (EUC)Completion of this form is required  
to qualify for benefits.

For Mailing Use ONLY

You have been identified as possibly eligible for Emergency Unemployment Compensation (EUC). COMPLETE THE APPLICATION BELOW and return it to the Unemployment Insurance Agency (UIA). See instructions on reverse side. Your eligibility for benefits cannot be established until we receive this completed application.

IF YOU ARE CURRENTLY DRAWING TRA BENEFITS, THEY WILL BE SUSPENDED UNTIL YOU HAVE DRAWN ALL EUC BENEFITS AVAILABLE TO YOU. COMPLETE AND RETURN THIS APPLICATION FORM IMMEDIATELY.

1. Social Security Number 4637

2. PRINT Name? Lucante Frank FR MC

3. No. and Street P.O. Box 3083

4. City-State-Zip Code Centerville OH 43015 MACOMB

5. Telephone Number (586) 443-6737

## SINCE YOU LAST CLAIMED BENEFITS:

6. Have you applied for or received retirement benefits? ☐ NO ☐ YES
7. Have you moved or changed your name? ☐ NO ☐ YES
8. Are you in training or attending school? (If "YES," give dates.) From                      Thru
9. Are you currently receiving UI benefits from the federal government, another state, or Canada? ☐ NO ☐ YES
10. Do you wish to have Federal and Michigan State income tax withheld from the taxable portion of each weekly benefit payment? ☐ NO ☐ YES
- A. If "YES," you must enter the number of dependents/exemptions you claim for state income tax purposes.
11. List your last employer here whether in Michigan or not.

UIC Account No. (DO NOT WRITE HERE) <u>00254310001</u>	Check Digit <u>1</u>	<input type="checkbox"/> Hourly <input type="checkbox"/> Salary	First Date Worked <u>04-25-07</u>	Last Date Worked <u>7-25-08</u>
Employer Name <u>UICM</u>	Plant or Location <u>UICM and Pack</u>	Telephone <u>(586) 665-5000</u>	Reason for separation (Enter the reason number in the box)	
City-State-Zip Code <u>                    </u>	Position Title <u>Working in the</u>	Was Social Security taken out of your pay? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input type="checkbox"/> (1) Laid Off/Lack of Work <input type="checkbox"/> (2) Fired <input type="checkbox"/> (3) Quit <input type="checkbox"/> (4) Retired (Voluntarily) <input type="checkbox"/> (5) Retired (Involuntary) <input type="checkbox"/> (6) Labor Dispute <input type="checkbox"/> (7) Other <input type="checkbox"/> (8) BSI Employed <input type="checkbox"/> (9) Medical Strike <input type="checkbox"/> Imprisonment <input type="checkbox"/> Drugs <input type="checkbox"/> Theft <input type="checkbox"/> Assault and Battery <input type="checkbox"/> Withd Description	

Do you expect to return to work with this employer or a previous employer? ☐ Yes ☒ No ☐ I don't know

If your return to work date exceeds 120 days, you must register for work to be eligible for benefits. (See instructions)

12. If you are not a citizen of the USA, enter the type of INS form or document issued to you:                      Expiration Date:
13. I certify that all of the information submitted by me on this form is true and correct to the best of my knowledge and belief. I UNDERSTAND THAT THE LAW PROVIDES PENALTIES OF FINES, IMPRISONMENT, AND/OR COMMUNITY SERVICE FOR FALSE STATEMENTS TO SECURE BENEFITS.

Your Signature per phone call Date 2-5-09

14. UIA OFFICE USE ONLY

Filing Date <u>01201509</u>	SYB Date <u>017217018</u>	UIA No. <u>                    </u>
Adm. <u>                    </u>	RO <u>                    </u>	Effective W/E Date <u>01/19/09</u>
ROW/IAW Date <u>                    </u>	Reg. Reg. <u>Y N</u>	UO 1003/APP <u>                    </u>
ONE Date <u>                    </u>		

\* 01913 1807 \*

K.A.P.

UVA1813-U  
(Rev. 7-08)  
(Reverse Side)Authorized by  
MCL 421.1, et seq.**IMPORTANT INFORMATION ABOUT CLAIMING BENEFITS**

To claim benefits call MARVIN on your next regular appointment day and time and continue to call MARVIN on your appointment day and time. If you are unable to call or are unsure about your usual appointment day and time, call between 8:00 a.m. and 7:00 p.m. Eastern Time on Thursday or Friday during the same week. If you are currently claiming benefits by mailing certification forms, continue to do so.

To be eligible for Emergency Unemployment Compensation (EUC), you must have exhausted regular benefits and continue to meet all of the regular unemployment eligibility requirements. Your registration for work with the Michigan Worknet Agency (MWA) is valid for one year. If your registration expires, report to your local Michigan Worknet Agency to re-register. For Michigan Worknet Agency locations, call 1-800-288-WORK.

If you are currently drawing TRA benefits, payments of TRA benefits must be suspended until you have exhausted all entitlement to EUC benefits. Therefore, it is very important that you complete and return the application for EUC benefits.

TTY customers use 1-866-366-0004.

MAIL THIS FORM IMMEDIATELY TO:

FAX NUMBER: \_\_\_\_\_

**NOTICE**

Under 18 U.S.C. section 1001, knowingly and willfully concealing a material fact by any trick, scheme, or device or knowingly making a false statement in connection with this claim is a federal offense, punishable by a fine or imprisonment for not more than five years, or both.

DLEG is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

Page 18 of 66 [08/01/18 05:20:34 PM Eastern Daylight Time] From: 248-247-3310

RECEIVED by MSC 9/9/2020 8:16:51 PM



To file

UAI18154J  
(Rev. 7-09)State of Michigan  
Department of Labor & Economic Growth  
UNEMPLOYMENT INSURANCE AGENCYAuthorized by  
MCL 421.1, et seq.APPLICATION FOR EMERGENCY  
UNEMPLOYMENT COMPENSATION (EUC)Completion of this form is required  
to qualify for benefits.

For Mailing Use EN 72

You have been identified as possibly eligible for Emergency Unemployment Compensation (EUC). COMPLETE THE APPLICATION BELOW and return it to the Unemployment Insurance Agency (UIA). See instructions on reverse side. Your eligibility for benefits cannot be established until we receive this completed application.

IF YOU ARE CURRENTLY DRAWING TRA BENEFITS, THEY WILL BE SUSPENDED UNTIL YOU HAVE DRAWN ALL EUC BENEFITS AVAILABLE TO YOU. COMPLETE AND RETURN THIS APPLICATION FORM IMMEDIATELY.

1. Social Security Number 4632

2. First Name Frank Last Name Lucente

3. No. and Street P.O. Box 3083

4. City/State/Zip Code Centerline MI 48015 County Macomb 5. Telephone Number (586) 443-6737

## SINCE YOU LAST CLAIMED BENEFITS:

6. Have you applied for or received retirement benefits? ☒ NO ☐ YES
7. Have you moved or changed your name? ☒ NO ☐ YES
8. Are you in training or attending school? (If "YES," give dates.) From                      Thru                      ☒ NO ☐ YES
9. Are you currently receiving UI benefits from the federal government, another state, or Canada? ☒ NO ☐ YES
10. Do you wish to have Federal and Michigan State income tax withheld from the taxable portion of each weekly benefit payment? ☒ NO ☐ YES
- A. If "YES," you must enter the number of dependents/exemptions you claim for state income tax purposes.

## 11. List your last employer here whether in Michigan or not.

(DO NOT WRITE HERE)	UG Account No. <u>002545100-1</u>	Check Digit <u>1</u>	<input type="checkbox"/> Hourly <input type="checkbox"/> Salary	First Date Worked <u>04-25-07</u>	Last Date Worked <u>7-25-08</u>
EMPLOYER - Firm Name <u>Apim</u>	Address <u>1411m</u>	City - State - Zip Code <u>Centerline MI 48015</u>	County <u>Macomb</u>	Reason for separation (Enter the reason number in the box)	(1) Laid Off/End of Work
				(2) Fired	(7) Other
				(3) Out	(8) Self Employed
				(4) Retired (Voluntarily)	(9) Voluntary Strike
				(5) Retired (Involuntarily)	(10) Imprisonment
				(6) Labor Dispute	(11) Drugs
				<input type="checkbox"/> Strike <input type="checkbox"/> Lockout	(12) Assault and Battery
					(13) Work Destruction

Do you expect to return to work with this employer or a previous employer? ☐ Yes ☒ No ☐ I don't know

If your return to work date exceeds 120 days, you must register for work to be eligible for benefits. (See instructions)

12. If you are not a citizen of the USA, enter the type of INS form or document issued to you:                      Expiration Date:
13. I certify that all of the information submitted by me on this form is true and correct to the best of my knowledge and belief. I UNDERSTAND THAT THE LAW PROVIDES PENALTIES OF FINES, IMPRISONMENT, AND/OR COMMUNITY SERVICE FOR FALSE STATEMENTS TO SECURE BENEFITS.

Your Signature per phone call Date 2-5-09

14. UIA OFFICE USE ONLY

Filing Date <u>01201509</u>	BYB Date <u>01721708</u>	UIA No. <u>                    </u>
ASST <u>                    </u>	RC <u>                    </u>	EUC/Line W/E Date <u>0113109</u>
NEW/RAW Date <u>                    </u>	Reg. Reg. <u>Y N</u>	UC 1800/APP <u>                    </u>
C/E Date <u>                    </u>		



\* 01913



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KAR

USA1813-U  
(Rev. 7-08)  
(Reverse Side)

Authorized by  
MCL 431.7, et seq.

### IMPORTANT INFORMATION ABOUT CLAIMING BENEFITS

To claim benefits call MARVIN on your next regular appointment day and time and continue to call MARVIN on your appointment day and time. If you are unable to call or are unsure about your usual appointment day and time, call between 8:00 a.m. and 7:00 p.m. Eastern Time on Thursday or Friday during the same week. If you are currently claiming benefits by mailing certification forms, continue to do so.

To be eligible for Emergency Unemployment Compensation (EUC), you must have exhausted regular benefits and continue to meet all of the regular unemployment eligibility requirements. Your registration for work with the Michigan Worknet Agency (MWA) is valid for one year. If your registration expires, report to your local Michigan Worknet Agency to re-register. For Michigan Worknet Agency locations, call 1-800-285-WORK.

If you are currently drawing TRA benefits, payments of TRA benefits must be suspended until you have exhausted all entitlement to EUC benefits. Therefore, it is very important that you complete and return the application for EUC benefits.

TTY customers use 1-888-368-0004.

MAIL THIS FORM IMMEDIATELY TO:

FAX NUMBER: \_\_\_\_\_

### NOTICE

Under 18 U.S.C. section 1001, knowingly and willfully concealing a material fact by any trick, scheme, or device or knowingly making a false statement in connection with this claim is a federal offense, punishable by a fine or imprisonment for not more than five years, or both.

DLEG is an equal opportunity employer/program. Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.

Page 18 of 88 [08/13/2018 5:30:30 PM Eastern Daylight Time] From: 248-247-3310

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## State of Michigan

DLEG - Unemployment Insurance Agency

## Emergency Unemployment Compensation (EUC) Application

## EUC Claimant Information

Frank Lucente [REDACTED]-4637]  
 22923 NEWBERRY ST  
 SAINT CLAIR SHORES, MI48080-1963  
 586-322-5504  
 Claim BYB: 07/27/2008  
 Extension Effective Date: 02/01/2009  
 Date Filed: 02/02/2009  
 Claim Type: New  
 EUC Tier: 1  
 Confirmation Number: EUC46370727200802022009

## Since you last Claimed Benefits

Have you started receiving retirement benefits since your last Unemployment payment? No  
 Have you moved or changed your name? Yes  
 Have you started training or attending school since your last Unemployment payment? No  
 Are you currently receiving UI benefits from another state (other than Michigan) or Canada? No

## Income Tax Withholding

Do you wish to have Federal and Michigan Income tax withheld from the taxable portion of each weekly benefit payment? No  
 Number of dependents/exemptions:

## Citizenship

Are you a citizen of the USA? Yes

## Last Employer Information

Helm Inc.  
 14310 Hamilton  
 High Park, MI-48203  
 313-865-5000  
 Plant or Location worked: Highland Park  
 Position Title: Maintenance  
 Type of Wage: Hourly  
 Was Social Security taken out of your pay? Yes  
 First Date Worked: 04/25/2007  
 Last Date Worked: 06/04/2008  
 Reason for Separation: Laid Off  
 Do you expect to return to work with this employer or a previous employer? No  
 Expected return to work date:

I certify that all the information submitted by me on this form is true and correct to the best of my knowledge and belief. I UNDERSTAND THAT THE LAW PROVIDES PENALTIES OF FINES, IMPRISONMENT AND/OR COMMUNITY SERVICE FOR FALSE STATEMENTS TO SECURE BENEFITS.

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7/8/2018 3:39:30 PM [Eastern Daylight Time] From: 248-247-3310

## EXHIBIT 2

### Record of Work Search, February 2010

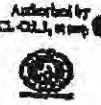


USA 1513  
(Rev. 6-85)



State of Michigan  
Department of Energy, Labor & Economic Growth  
UNEMPLOYMENT INSURANCE AGENCY  
www.michigan.gov/ela

Mail or fax this form to:  
Unemployment Insurance Agency  
P.O. Box 169  
Grand Rapids, MI 49501-0169  
Fax: 1-317-636-0437



Weekly Extended Benefits (EB) Record of Work Search

**IMPORTANT:** One of the requirements to be eligible for Extended Benefits (EB) is that you must make a systematic and sustained effort to find work for each week you are claiming EB. You must contact a minimum of 3 employers per week, and report the details and results of your work search efforts to us. You can do this by:  
(1) Recording your work search efforts on this form and then mail or fax this form to the address or fax number shown above BEFORE you call MARVIN for the two-week period covered by this form, OR  
(2) If you used MARVIN Online to claim Extended Benefits for the previous two-week period, you must report your work search efforts on our web site at <http://www.michigan.gov/ela>.  
If you have any questions about this form or EB work search requirements, call us at 1-800-800-0017 (TTY numbers use 1-800-396-0004) between 8:00 AM and 4:30 PM (Eastern Time) Monday through Friday. Note: The 4:30 PM time has been extended on a temporary basis to 6:00 PM.

Name: Frank Lucante  
(Please print clearly and use black ink)

Enter your Social Security number  
4637

First Week Ending Date: <u>2-20-10</u>						
<u>2-16</u>	<u>ACE Hardware</u>	<u>45645 Van Dyke / Apt 104</u>	<u>STAN / Apt. Mgr.</u>	<u>In Person</u>	<u>General Help</u>	<u>App. Submitted</u>
<u>2-17</u>	<u>Superior Spats</u>	<u>51889 Schaeffer / GHESB</u>	<u>Lois / H.R.</u>	<u>Internet</u>	<u>Swim Rental</u>	<u>App. Submitted</u>
<u>2-19</u>	<u>Michigan Roll Form</u>	<u>33606 Darden / Foster</u>	<u>BSH / Foreman</u>	<u>In Person</u>	<u>Cover / Grinder</u>	<u>App. Submitted</u>
Second Week Ending Date: <u>2-27-10</u>						
<u>2-22</u>	<u>Hunny Howie's Pizza</u>	<u>17144 Fiske / Rensselaer</u>	<u>Dan / Apt. Mgr.</u>	<u>In Person</u>	<u>Pizza Delivery</u>	<u>App. Submitted</u>
<u>2-24</u>	<u>Charm Spats</u>	<u>44600 Lakeview Circle / G.H.</u>	<u>Jane / H.R.</u>	<u>Internet</u>	<u>Retail</u>	<u>App. Submitted</u>
<u>2-25</u>	<u>Ortade Systems</u>	<u>22812 10th St. / G.H.</u>	<u>Jack / Supervisor</u>	<u>In Person</u>	<u>Pipefitter</u>	<u>App. Submitted</u>

Your Certification: By signing this form, I am reporting my work searches for the week(s) shown above. The information reported on this form is true and correct to the best of my knowledge and belief. Under 18 U.S.C. Section 1001, knowingly and willfully concealing a material fact by any trick, scheme, or device or knowingly making a false statement in connection with this claim is a Federal offense, punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

Signature: [Signature]

Date: 2-26-10

Date Mailed: \_\_\_\_\_

1 5 8 3 0 9 0 6 \*

DELEG is an equal opportunity employer/program.

U.S. 130  
(Rev. 4-87)State of Michigan  
Department of Health, Labor & Economic Growth  
UNEMPLOYMENT INSURANCE AGENCY  
www.michigan.gov/dle

## Weekly Extended Benefits (EB) Record of Work Search

Mail or fax this form to:  
Unemployment Insurance Agency  
P.O. Box 169  
Grand Rapids, MI 49501-0169  
Fax 1-517-636-0477Authorized by  
MCL 201.1, et seq.

**IMPORTANT!** One of the requirements to be eligible for Extended Benefits (EB) is that you must make a systematic and sustained effort to find work for each week you are claiming EB. You must contact a minimum of 3 employers per week, and report the details and results of your work search efforts to us. You can do this by:

(1) Recording your work search efforts on this form and then mail or fax this form to the address or fax number shown above BEFORE you call MARVIN for the two-week period covered by this form, OR

(2) If you used MARVIN Online to claim Extended Benefits for the previous two week period, you must report your work search efforts on our web site at [Michigan.mhhs.com](http://Michigan.mhhs.com).

If you have any questions about this form or EB work search requirements, call us at 1-800-500-0017 (TTY customers use 1-800-965-0004) between 8:00 AM and 4:30 PM (Eastern Time) Monday through Friday. Note: The 4:30 PM time has been extended on a temporary basis to 6:05 PM.

Name: Frank Lucente  
(Please print clearly and use black ink)

Enter your Social Security number

4637

Week	Employer	Address	Phone	Method	Result	App. Submitted
First Week Ending Date: <u>2-6-10</u>						
2-1	Orkell Apts.	45600 Oak Hill Blvd.	Human Resources	Internet	App. Submitted	
2-2	Bellacids Pizza	11542 10th Rd	Self/Employee	In Person	App. Submitted	
2-4	Cal Flaming Lardapost	22-125 Broadway	Human Resources	Internet	App. Submitted	
Second Week Ending Date: <u>2-13-10</u>						
2-9	Juts Pizza	22412 Penn Rd.	Self/Employee	In Person	App. Submitted	
2-10	Stirling Hts. Apts.	2195 Penn Rd.	Self/Employee	In Person	App. Submitted	
2-11	Vicky Inn	28950 Grand	Self/Employee	In Person	App. Submitted	

Your Certification: By signing this form, I am reporting my work searches for the week(s) shown above. The information reported on this form is true and correct to the best of my knowledge and belief. Under 18 U.S.C. Section 1001, knowingly and willfully concealing a material fact by any trick, scheme, or device or knowingly making a false statement in connection with this claim is a Federal offense, punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

Signature: Frank LucenteDate: 2-12-10

Date Mailed: \_\_\_\_\_

1 5 8 3 0 9 0 6 \*

OELE is an equal opportunity employer/program.



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EXHIBIT 3  
Letter from Dart

(Rev. 8/7/02)

STATE OF MICHIGAN  
Department of Energy, Labor & Economic Growth  
UNEMPLOYMENT INSURANCE AGENCY

See "For Employers" at bottom for non-compliance penalty.  
Office No. 023

REQUEST FOR INFORMATION RELATIVE TO POSSIBLE  
INELIGIBILITY OR DISQUALIFICATION

Authorized by MOI 421.1, et seq.

RECEIVED JUL 09 2010

DART PROPERTIES II LLC  
500 HOGSBACK ROAD  
HASON MI 48854-9541

BYB: 07/27/2008 138  
UNEMPLOYED WORKER: 4637  
LUENTE FRANK

RETURN FORM TO:  
UNEMPLOYMENT INSURANCE AGENCY  
PO BOX 169  
GRAND RAPIDS MI 49501-0169  
FAX NUMBER: 1-517-838-4427

Inquiry Line: 1-866-500-0017  
TTY Customer: 1-366-366-0004

EMPLOYER NUMBER: 1562346 000

You are involved in a claim for unemployment benefits, either as the employer or as the unemployed worker. The Unemployment Insurance Agency (UIA) needs the information below in order to make a determination on eligibility or qualification for benefits.

Please answer all the questions below. If additional space is needed enter your answers on the back of this form or attach additional sheet(s) if necessary. If a question does not apply or you choose not to answer it, enter "n/a" (not applicable). In completing this form provide in complete and specific detail all information you believe would be helpful to us. If a reply is not received by the UIA within 10 days of the Date Mailed shown below, a (re)determination will be made on the basis of the available information. Mail or fax your answers to the return location indicated on the top of this form. You should keep a copy of the completed form for your records.

PROVIDE COMPLETE DETAILS REGARDING THE CLAIMANT'S SEPARATION.

PLEASE LIST ALL DISCIPLINARY ACTION(S) INITIATED PRIOR TO SEPARATION.

WAS THE CLAIMANT SEPARATED FOR VIOLATION OF COMPANY RULE(S)? WHAT IS/ARE THE RULE(S)? HOW WAS THE CLAIMANT MADE AWARE OF SUCH RULE(S)?

PLEASE SEND A COPY OF COMPANY POLICY AND/OR CONTRACT PROVISIONS THAT SUPPORT YOUR ACTION(S).

Date Mailed Month 07 Day 07 Year 2010 Interviewer A. ADJUD TASK FORCE

YOUR ANSWERS  
If necessary, continue on reverse side.

See attached

\* 3 7 4 8 2 4 6 3 7 U C 1 7 6 7 0 7 2 7 2 0 0 8 \*



JUL08/2018 3:29:42 PM

HCFA 248-247-3310

25/88

JUL 16 2010 09:08 536 979 2479

DART PROPERTIES

#2303 P.003 /004

RECEIVED by MSC 9/9/2020 8:16:51 PM

1. The claimant is not separated. He has been working for us continuously since 2/16/10.
2. N/A
3. N/A
4. N/A

071610G0042029

Page 25 of 88 [08/16/2010 09:08:30 PM Eastern Daylight Time] From: 248-247-3310

JUL 16 2010 09:09 586 979 2179

DART PROPERTIES

#2303 P.004 /004

10/01/10  
(Rev. 6/2009)  
Reverse Side

Unemployed  
Worker's Name:

FRANK LUCENTE

Employer Name:

DART PROPERTIES II LLC

SSN:

[REDACTED] 4637

Employer Account Number: 1562346 000

Benefit Year Beginning:

07/27/2008

Continue your answers here. Attach additional sheets, if necessary.

Page 26 of 64 08/01/2010 09:09:42 PM [Eastern Daylight Time] From: 248-247-3310

**UNEMPLOYED WORKER:** You are required to respond to this form within 10 days of the Date Mailed shown on the front of this form.

Most recent occupation \_\_\_\_\_ ☐ Full-time ☐ Part-time Work schedule \_\_\_\_\_

Your first day worked: \_\_\_\_\_ Last day worked: \_\_\_\_\_ Most recent wage: \_\_\_\_\_  
☐ hourly ☐ weekly

Your name (please print) \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

Your Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FOR EMPLOYERS:** You are requested to respond to this form within 10 days of the Date Mailed shown on the front of this form, whether you feel payment(s) on this claim should be allowed or denied. If you fail to respond timely, you will not receive credit for benefits paid prior to receipt of the information, even if the unemployed worker is later found ineligible or disqualified. Please provide the following additional information

First day worked: 2-16-10 Last day worked: n/a Date removed from payroll: n/a

Your Name and Title (please print): Nancy Laird

Your signature: Nancy Laird Date: 7-16-10

Phone: (506) 979-4110



Visit us on the Internet at [www.michigan.gov/uta](http://www.michigan.gov/uta)  
DELEG is an Equal Opportunity Employer/Program.





# EXHIBIT 4

## Request for Information





UIA 1797  
(Rev. 1-00)  
Reverse Side

Unemployed Worker's Name: Frank Lucante  
SSN: 837  
Benefit Year Beginning: 07/27/08

Employer Name: DART PROPERTIES II LLC  
Employer Account Number: 1882348000

7. Were other employees discharged at the same time for the same reason? If yes, provide name(s).
8. When were you made aware of the policy?
9. Did you receive a copy of the company policy?
10. Provide any additional facts regarding this separation.

**UNEMPLOYED WORKER:** You are required to respond to this form within 10 days from the Mail Date on the front of this form.

Most recent occupation: \_\_\_\_\_ Full-Time ☐ Part-Time ☐ Work schedule

Your first day worked: \_\_\_\_\_ Last day worked: \_\_\_\_\_ Most recent wage: \_\_\_\_\_ hourly ☐ weekly ☐

Your name (please print): \_\_\_\_\_ Phone: \_\_\_\_\_

Your signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FOR EMPLOYERS:** You are required to respond to this form within 10 days of the Mail Date on the front of this form whether you feel payment(s) on this claim should be allowed or denied. If you fail to respond timely, you will not receive credit for benefits paid prior to receipt of the information, even if the unemployed worker is later found ineligible or disqualified. Please provide the following additional information.

First day worked: \_\_\_\_\_ Last day worked: \_\_\_\_\_ Date removed from payroll: \_\_\_\_\_

Your Name and Title (please print): \_\_\_\_\_

Your Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Phone: \_\_\_\_\_

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EN22\_00ZCZCF3V3F3K97

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# EXHIBIT 5

## Notice of Redetermination



# EXHIBIT 6

## Notice of Redetermination

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# EXHIBIT 7

## Non-Protestable Summary of (Re) Determined Restitution



# EXHIBIT 8

## Wage Garnishment Request

UIA 1141  
(Rev. 01-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Department of Licensing and Regulatory Affairs  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/uia



Authorized By  
MCL 421.1 et seq.  
Shaun Thomas  
DIRECTOR

15 326

For: Workforce Solutions

Mail Date: April 3, 2014

Letter ID: L0009849905

FEIN: 200455784

Name: VENSURE HR INC

VENSURE HR INC  
4140 E BASELINE RD STE 201  
MEBA AZ 85208-4414

APR 17 2014

## Wage Garnishment Request

FRANK LUCENTE, SSN [REDACTED] has overpayment debt with the State of Michigan, Unemployment Insurance Agency (UIA). We have been informed that they are currently working for you. Please answer the questions below regarding their employment status with you. This completed form must be received by UIA within 10 calendar days of the mail date shown.

## CURRENT EMPLOYMENT STATUS:

- Is the debtor named above currently employed by you? ☒ Yes ☐ No
- Please indicate the debtor's pay cycle: ☒ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other
- If the debtor is not currently employed by you, did or were they:
  - ☐ Laid Off ☐ Terminated ☐ Quit ☐ Never Employed by you?
- If the debtor was laid off, on what date is the debtor expected to return to work? \_\_\_\_\_
- If the debtor was terminated or quit, on what date did the separation occur? \_\_\_\_\_
- If terminated or quit, is the debtor currently employed elsewhere? ☐ Yes ☐ No ☐ Unknown
- If employed elsewhere, provide the name and address of the current employer, if known \_\_\_\_\_

Please return this form to the address shown below. If the debtor is not currently employed by you, do not complete the back of this form.

Benefit Enforcement Unit  
PO Box 188  
Grand Rapids MI 49501-0188  
Phone number: (313) 456-1360 from 9:00 a.m. to 3:00 p.m. Monday through Friday  
Fax: 517-836-0427  
BEU@Michigan.Gov

## WAGE GARNISHMENT ORDER

THIS ORDER OF WAGE GARNISHMENT ISSUED BY THE STATE OF MICHIGAN, UNEMPLOYMENT INSURANCE AGENCY, UNDER THE AUTHORITY OF THE MICHIGAN COMPILED LAWS (MCL), SECTIONS 421.15(m)(3) AND 421.15(n) REQUIRES THE EMPLOYER OF THE NAMED DEBTOR TO DO THE FOLLOWING: This debtor is subject to Wage Garnishment Request which means that you will be required to complete a worksheet and submit payment of up to 25% to the State of Michigan Unemployment Insurance Agency (UIA) each pay period. You will receive a monthly voucher and worksheet to remit payment. You will complete the worksheet for each pay period to the UIA that represents the total of all the payment withheld from the debtor's paycheck(s). Each month's payment must be submitted to the UIA as long as you employ the debtor, or until you are notified by the UIA to suspend or discontinue deductions because the debt has been satisfied. During this process, if the claimant becomes unemployed from your company, please notify the UIA of this change in employment status either in writing or by phone. You may contact the Benefit Enforcement Unit at (313) 456-1360.



LARA is an Equal Opportunity Employer/Program.

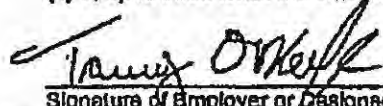


UA 1141  
(Rev. 01-14)

Letter ID: L0009849908

## CERTIFICATION

I certify that I am the Employer, or authorized by the Employer, to complete this Wage Garnishment process and that I have answered completely and correctly to the best of my knowledge and belief. I understand that MCL 421.54(a) provides penalties for intentional failure to comply with the Wage Garnishment process provided under MCL 421.15 (n) of up to three times the amount involved, and/or community service, and/or imprisonment.

  
Signature of Employer or Designee  
Print NameVERSURE HR INC  
Business Name4-23-14  
Date480-993-2650  
Telephone

LARA is an Equal Opportunity Employer/Program.

Page 2 of 2 0000482

# EXHIBIT 9

## Notice (s) of Payment Due



UJA 1088  
(Rev. 01/12)State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/ujia](http://www.michigan.gov/ujia)Authorized by  
MCL 421.1 et seq.FRANK, LUCENTE  
23630 DENTON ST 129  
CLINTON TOWNSHIP, MI. 48038-Statement Date :  
SSN :

03/27/2012

4637

## NOTICE OF PAYMENT DUE

Current Overpayment Balance:	\$8,988.00
Interest Balance as of 03/27/2012:	\$0.00
Current Penalty Balance:	\$26,964.00
Minimum Monthly Payment Due:	\$250.00

You received a determination from the Unemployment Insurance Agency (UIA) that you were overpaid unemployment benefits. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the current overpayment, interest, and penalty balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

Your Michigan State Income Tax Refund, as provided by MCL § 421.62(a), will be intercepted by the UIA and used as payment toward the amount you owe if payment in full is not made on your account. Your Federal Income Tax Refund, as provided by 26 U.S.C. 6402(f), will be intercepted by the UIA for overpayment of unemployment benefits due to intentional misrepresentation or unreported earnings if payment in full is not made on your account. The current overpayment, current interest, and current penalty balances must be paid in full to avoid having the UIA intercept your tax refund(s). Paying the minimum monthly payment will not stop your income tax refund(s) from being intercepted by the UIA. In addition, if you are currently receiving unemployment benefits and overpayment deductions are being withheld from your payments by the UIA, your income tax refund(s) will still be intercepted by the UIA to pay off your balance(s).

Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:

BENEFIT OVERPAYMENT COLLECTION UNIT  
P.O. BOX 9045

DETROIT, MI 48202-9045

Telephone: 1-800-638-6372 (TTY customers use 1-866-368-0004)  
from 9:00 AM to 3:30 PM Eastern TimeUNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNIT  
PAYMENT COUPONSSN: 4637  
Name: FRANK, LUCENTE  
Statement Date: 03/27/2012  
Records Office: 023

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

If your address has changed, check here ☐ and provide new address:Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Zip/Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

LARA IS AN EQUAL OPPORTUNITY EMPLOYER PROGRAM

Page 49 of 68 [08/14/2018 3:35:30 PM [Eastern Daylight Time] From: 248-247-3310]

**EXHIBIT 10**  
**Second Notice of Payment Due**  
**Final Notice of Payment Due**



UIA 1085  
(Rev. 01/12)

State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/uia](http://www.michigan.gov/uia)

Authorized by  
MCL 421.1 et seq.

FRANK . LUCENTE  
PO BOX 3083  
CENTER LINE, MI 48015-0083

Statement Date :  
SSN :

04/24/2012

4637

## SECOND NOTICE OF PAYMENT DUE

Current Overpayment Balance:	\$6,966.00
Interest Balance as of 04/24/2012:	\$0.00
Current Penalty Balance:	\$26,964.00
Minimum Monthly Payment Due:	\$250.00

You failed to pay the minimum monthly payment due last month. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the above balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

Your Michigan State Income Tax Refund, as provided by MCL § 421.62(a), will be intercepted by the UIA and used as payment toward the amount you owe if payment in full is not made on your account. Your Federal Income Tax Refund, as provided by 26 U.S.C. 6402(f), will be intercepted by the UIA for overpayment of unemployment benefits due to intentional misrepresentation or unreported earnings if payment in full is not made on your account. The current overpayment, interest, and penalty balances must be paid in full to avoid having the UIA intercept your tax refund(s). Paying the minimum monthly payment will not stop your income tax refund(s) from being intercepted by the UIA. In addition, if you are currently receiving unemployment benefits and overpayment deductions are being withheld from your payments by the UIA, your income tax refund(s) will still be intercepted by the UIA to pay off your balance(s).

Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:



BENEFIT OVERPAYMENT COLLECTION UNIT  
P.O. BOX 9045  
DETROIT, MI 48202-9045

Telephone: 1-800-638-6372 (TTY customers use 1-866-368-0004)  
from 9:00 AM to 3:30 PM Eastern Time



UNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNIT  
PAYMENT COUPON

SSN: 4637

Name: FRANK . LUCENTE  
Statement Date: 04/24/2012  
Records Office: 023

If your address has changed, check here ☐ and provide new address:

Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Zip/Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

LARA IS AN EQUAL OPPORTUNITY EMPLOYER PROGRAM



UIA 1083  
(Rev. 04/12)

State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/ila](http://www.michigan.gov/ila)

Authorized by  
MCL 421.1 et seq.

FRANK LUCENTE  
PO BOX 3083  
CENTER LINE, MI 48015-0083

Statement Date :  
SSN :

05/24/2012  
4637

## FINAL NOTICE OF PAYMENT DUE

Current Overpayment Balance:	\$6,966.00
Interest Balance as of 05/24/2012:	\$0.00
Current Penalty Balance:	\$26,964.00
Minimum Monthly Payment Due:	\$375.00

You failed to pay the minimum monthly payment due last month. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the above balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

Your Michigan State Income Tax Refund, as provided by MCL § 421.82(a), will be intercepted by the UIA and used as payment toward the amount you owe if payment in full is not made on your account. Your Federal Income Tax Refund, as provided by 26 U.S.C. 6402(f), will be intercepted by the UIA for overpayment of unemployment benefits due to intentional misrepresentation or unreported earnings if payment in full is not made on your account. The current overpayment, interest, and penalty balances must be paid in full to avoid having the UIA intercept your tax refund(s). Paying the minimum monthly payment will not stop your income tax refund(s) from being intercepted by the UIA. In addition, if you are currently receiving unemployment benefits and overpayment deductions are being withheld from your payments by the UIA, your income tax refund(s) will still be intercepted by the UIA to pay off your balance(s).

Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:



BENEFIT OVERPAYMENT COLLECTION UNIT  
P.O. BOX 9045  
DETROIT, MI 48202-9045

Telephone: 1-800-638-6372 (TTY customers use 1-866-368-0004)  
from 9:00 AM to 3:30 PM Eastern Time



UNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNIT

### PAYMENT COUPON

Prefer to pay on line?  
At [www.michigan.gov/ila](http://www.michigan.gov/ila), click on Online Services

SSN: 4637  
Name: FRANK LUCENTE  
Statement Date: 05/24/2012  
Records Office: 023

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

If your address has changed, check here ☐ and provide new address:  
Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Zip Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

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**EXHIBIT 11**  
**Notice of Garnishment**  
**October 29, 2013**

Page 52 of 66 | 08/01/2018 3:38:30 PM [Eastern Daylight Time] From: 248-247-3310

UIA 1148  
(Rev. 09-13)  
Rick Snyder  
GOVERNOR



State of Michigan  
Department of Licensing and Regulatory Affairs  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/ula



Authorized By  
MCL 421.1 et seq.  
Shaun Thomas  
DIRECTOR

FRANK LUCENTE  
PO BOX 3083  
CENTER LINE MI 48015-0083

Mail Date: October 29, 2013  
Letter ID: L0004931844  
MIN: 0337484032  
Name: FRANK LUCENTE

### Notice of Garnishment

Principal Amount: \$8,966.00  
Penalty Amount: \$26,984.00  
Interest Amount: \$0.00  
Total Balance: \$33,930.00

You are indebted to the State of Michigan, Unemployment Insurance Agency (UIA), in the amount listed above for an overpayment of unemployment benefits. Prior attempts have been made to contact you to satisfy the debt, however the balance remains outstanding. You are required to remit payment in full in the amount of \$33,930.00 within 30 calendar days of the mail date shown. Under an Administrative Garnishment, your employer will be required to deduct and send to the UIA up to 25% of your disposable earnings each pay period until the debt is paid in full.

You may object to the Administrative Wage Garnishment by providing the UIA with evidence that you are not the debtor or that the amount listed above is incorrect. Such evidence must be provided within 30 days from the mail date shown above. If such proof is provided, the UIA will conduct a review of the documents provided.

Under state law, this garnishment is not subject to appeal. However, you may prevent the Administrative Wage Garnishment process by: (1) paying off the above balance in full, including accrued interest; or (2) entering into a Voluntary Wage Assignment with the UIA by which you agree to allow your employer to send a portion of your wages to the UIA every pay period. If you choose the Voluntary Wage Assignment option, you agree to assign up to 15% of your wages as opposed to the 25% deduction under an Administrative Wage Garnishment. Other collection methods, such as tax intercept(s) and benefit recoupment, will continue until the balance owed to the UIA is paid in full. If you are unable to pay the balance owed due to indigency, you may request a waiver due to your financial status.

If you would like to elect the Voluntary Wage Assignment option, please take this form to a notary public (available at most banks) and sign the form in their presence and return this form to the address below within 30 days of the mail date shown above. If you do not elect the Voluntary Wage Assignment option, or do not pay the debt in full, the Administrative Garnishment proceedings will commence 30 days from the above mail date.

Benefit Enforcement Unit  
PO Box 189  
Grand Rapids MI 49501-0189  
Phone number: (313) 456-1360  
Fax number: 517-836-0427

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Page 54 of 88 [09/08/2016 08:53:30 PM Eastern Daylight Time] From: 248-247-3310

UIA 1148  
(Rev. 09-13)

Letter ID: L0004931844

### Voluntary Wage Assignment Consent

I acknowledge that I have been overpaid unemployment benefits and owe \$33,930.00 and that I am required to repay this amount which may include principal, penalties and accrued interest. I agree to authorize my employer to deduct and send to the Unemployment Insurance Agency (UIA) up to 15% of my disposable income (gross income less federally required deductions, employer required deductions and prior garnishments or wage assignments, including health care premium, retirement contribution, child support obligations) per pay period to satisfy the debt. The Voluntary Wage Assignment will be effective until the amount I owe to the UIA has been fully repaid including accrued interest. If at any time I choose to rescind this voluntary agreement, I understand that the debt will be due in full within 30 days of the rescission date. If, upon rescission, payment in full is not received within 30 days, Administrative Wage Garnishment proceedings will commence on my account.

In the event I secure other employment or become unemployed, I agree to contact the UIA Benefit Enforcement Unit (BEU) to notify them of my employment status change. I agree to report the name and address of my new employer and to execute a new Voluntary Wage Assignment naming my new employer. If I am unemployed, I understand that I must continue making regular monthly payments until the overpayment amount is paid in full including accrued interest. If I have any questions, concerns, or problems making payments under this Agreement, I will contact the BEU at (313) 458-1360.

I am currently employed with:

\_\_\_\_\_  
Employer Name and Phone Number

\_\_\_\_\_  
Address, City, State, and Zip Code

\_\_\_\_\_  
Employer Federal Tax Identification Number

### Signature of Debtor and Notary Public:

I understand that Section 421.54(a) of the Michigan Compiled Laws provides penalties of a fine and/or imprisonment and/or community service for any false statement. I agree I have entered this Wage Assignment voluntarily and have not been threatened or coerced. The information reported by me is accurate and complete to the best of my knowledge and belief.

Subscribed and sworn to before me:

\_\_\_\_\_  
Debtor's Signature

This \_\_\_\_\_ day of \_\_\_\_\_  
Month/Year

\_\_\_\_\_  
Notary Public Signature

Notary Public \_\_\_\_\_ County, \_\_\_\_\_  
State

\_\_\_\_\_  
Type or Print Name

My Commission expires: \_\_\_\_\_  
Month/Day/Year



LARA is an Equal Opportunity Employer/Program.



JUL08/2018 3:29:42 PM

HCFA 248-247-3310

58/68

RECEIVED by MSC 9/9/2020 8:16:51 PM

Page 58 of 68 [9/8/2018 3:29:30 PM Eastern Daylight Time] From: 248-247-3310

Page 57 of 88 | 09/08/2018 05:30:38:30 PM [Eastern Daylight Time] From: 248-247-3310

**EXHIBIT 12**  
**Wage Garnishment Requests**  
**Vensure HR, Inc.**  
**April, October, November 2014; January 2015**



U/A 1141  
(Rev. 01-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Department of Licensing and Regulatory Affairs  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/ua



Authorized by  
MCL 421.1 et seq.  
Shaun Thomas  
DIRECTOR

15 32 6

VENBURE HR INC  
4140 E BASELINE RD STE 201  
MESA AZ 85205-4414

APR 17 2014

Mail Date: April 3, 2014  
Letter ID: L0009849805  
FEIN: 200456784  
Name: VENBURE HR INC

### Wage Garnishment Request

FRANK LUCENTE [REDACTED] has overpayment debt with the State of Michigan, Unemployment Insurance Agency (UIA). We have been informed that they are currently working for you. Please answer the questions below regarding their employment status with you. This completed form must be received by UIA within 10 calendar days of the mail date shown.

#### CURRENT EMPLOYMENT STATUS:

- Is the debtor named above currently employed by you? ☒ Yes ☐ No
- Please indicate the debtor's pay cycle: ☒ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other
- If the debtor is not currently employed by you, did or were they:
  - ☐ Laid Off ☐ Terminated ☐ Quit ☐ Never Employed by you?
- If the debtor was laid off, on what date is the debtor expected to return to work? \_\_\_\_\_
- If the debtor was terminated or quit, on what date did the separation occur? \_\_\_\_\_
- If terminated or quit, is the debtor currently employed elsewhere? ☐ Yes ☐ No ☐ Unknown
- If employed elsewhere, provide the name and address of the current employer, if known \_\_\_\_\_

Please return this form to the address shown below. If the debtor is not currently employed by you, do not complete the back of this form.

Benefit Enforcement Unit  
PO Box 189  
Grand Rapids MI 49501-0189  
Phone number: (313) 456-1360 from 9:00 a.m. to 3:00 p.m. Monday through Friday  
Fax: 817-838-0427  
BEU@Michigan.Gov

#### WAGE GARNISHMENT ORDER

THIS ORDER OF WAGE GARNISHMENT ISSUED BY THE STATE OF MICHIGAN, UNEMPLOYMENT INSURANCE AGENCY, UNDER THE AUTHORITY OF THE MICHIGAN COMPILED LAWS (MCL), SECTIONS 421.18(m)(3) AND 421.16(n) REQUIRES THE EMPLOYER OF THE NAMED DEBTOR TO DO THE FOLLOWING: This debtor is subject to Wage Garnishment Request which means that you will be required to complete a worksheet and submit payment of up to 28% to the State of Michigan Unemployment Insurance Agency (UIA) each pay period. You will receive a monthly voucher and worksheet to remit payment. You will complete the worksheet for each pay period to the UIA that represents the total of all the payment withheld from the debtor's paycheck(s). Each month's payment must be submitted to the UIA as long as you employ the debtor, or until you are notified by the UIA to suspend or discontinue deductions because the debt has been satisfied. During this process, if the claimant becomes unemployed from your company, please notify the UIA of this change in employment status either in writing or by phone. You may contact the Benefit Enforcement Unit at (313) 456-1360.

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Page 1 of 2 0000481

LWA 1141  
(Rev. 01-14)

Letter ID: L0009849905

## CERTIFICATION

I certify that I am the Employer, or authorized by the Employer, to complete this Wage Garnishment process and that I have answered completely and correctly to the best of my knowledge and belief. I understand that MCL 421.54(a) provides penalties for intentional failure to comply with the Wage Garnishment process provided under MCL 421.15 (n) of up to three times the amount involved, and/or community service, and/or imprisonment.

Tammy O'Keefe  
Signature of Employer or Designee  
Tammy O'Keefe  
Print Name

VERSURE HR INC  
Business Name  
4-23-14 480-993-2650  
Date Telephone

Page 50 of 66 [08/08/2018 3:29:42 PM Eastern Daylight Time] From: 248-247-3310



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UIA 1147  
(Rev. 01-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Department of Licensing and Regulatory Affairs  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/uia



Authorized By  
MCL 421.1 et seq.  
Sharon Moffett-Messery  
DIRECTOR

VENSURE HR INC  
4140 E BASELINE RD STE 201  
MESA AZ 85208-4414

DEC 8 2014

RECEIVED

NOV 24 2014

Mail Date: November 18, 2014

Letter ID: L0015285828

FEIN: 272887198

Name: HANBON MI II INC

*no wages  
since 9-26-14*

### Wage Garnishment Payment Request

FRANK LUCENTE, SSN: 374-82-4837, is in your employ and has received a determination from the Unemployment Insurance Agency (UIA) that they were overpaid unemployment benefits. The total balance which consists of overpaid benefits, interest, and penalty (if applicable) are now due. Based on an agreement signed by all parties involved, payment should be withheld from this individual's paycheck and sent into the UIA to be applied toward their debt.

Prior to completing the included worksheet(s), make additional blank copies or print a copy of this form through your online MIWAM account. Go to the letters tab, then go to the garnishment letters tab. Please complete the worksheet(s) with a breakdown of this individual's payment amount for each pay period and send the worksheet(s) separate from the payment to the following address:

Mail the worksheet(s) to:

Benefit Enforcement Unit

PO Box 189

Grand Rapids MI 49501-0189

Please submit the monthly payment for the total withheld for the month by using the voucher below. Do not send cash. Make your check or money order payable to: State of Michigan. Write the Claimant's MIN, as seen on the voucher below, on your check or money order so all accounts are properly credited.

Mail payment to:

Unemployment Insurance Agency - Restitution

Dept #771760

PO Box 77000

Detroit, MI 48277-1760

For questions, call the Benefit Enforcement Unit by phone at (313) 456-1360 from 9:00 a.m. to 3:00 p.m., Eastern Time Monday through Friday or you may e-mail them at BEU@Michigan.Gov.

Please cut and return bottom portion with your payment.

### Unemployment Insurance Agency Payment Voucher

VENSURE HR INC  
4140 E BASELINE RD STE 201  
MESA AZ 85208-4414

*\* no wages  
since 9-26-14*

Letter ID: L0015285828  
Statement Date: 18-Nov-2014  
Claimant MIN: 0337484032  
Media Number: 7848634885 G

State of Michigan  
Unemployment Insurance Agency - Restitution  
Dept #771760  
PO Box 77000  
Detroit, MI 48277-1760

Amount Enclosed: \$

6 000000000000 0337484032 0748634885 5



UIA 1141  
(Rev. 01-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Department of Licensing and Regulatory Affairs  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/uia



Authorized By  
MCL 421.1 et seq.  
Sharon Moffatt-Massey  
DIRECTOR

RECEIVED

OCT 09 2014

Mail Date: October 6, 2014  
Letter ID: L0014119209  
FEIN: 272887198  
Name: HANBON MI II INC

VENSURE HR INC  
4140 E BASELINE RD STE 201  
MEBA AZ 85208-4414

### Wage Garnishment Request

FRANK LUCENTE, SSN: 374-52-4637, has overpayment debt with the State of Michigan, Unemployment Insurance Agency (UIA). We have been informed that they are currently working for you. Please answer the questions below regarding their employment status with you. This completed form must be received by UIA within 10 calendar days of the mail date shown.

*\* no wages earned since 9-26-14*

#### CURRENT EMPLOYMENT STATUS:

- Is the debtor named above currently employed by you? ☒ Yes ☐ No
- Please indicate the debtor's pay cycle: ☒ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other
- If the debtor is not currently employed by you, did or were they:
  - ☐ Laid Off ☐ Terminated ☐ Quit ☐ Never Employed by you?
- If the debtor was laid off, on what date is the debtor expected to return to work? \_\_\_\_\_
- If the debtor was terminated or quit, on what date did the separation occur? \_\_\_\_\_
- If terminated or quit, is the debtor currently employed elsewhere? ☐ Yes ☐ No ☐ Unknown
- If employed elsewhere, provide the name and address of the current employer, if known \_\_\_\_\_

Please return this form to the address shown below. If the debtor is not currently employed by you, do not complete the back of this form.

Benefit Enforcement Unit  
PO Box 189  
Grand Rapids MI 49501-0189  
Phone number: (313) 456-1360 from 9:00 a.m. to 3:00 p.m. Monday through Friday  
Fax: 313-456-0427  
BEU@Michigan.Gov

#### WAGE GARNISHMENT ORDER

THIS ORDER OF WAGE GARNISHMENT ISSUED BY THE STATE OF MICHIGAN, UNEMPLOYMENT INSURANCE AGENCY, UNDER THE AUTHORITY OF THE MICHIGAN COMPILED LAWS (MCL), SECTIONS 421.15(m)(3) AND 421.18(n) REQUIRES THE EMPLOYER OF THE NAMED DEBTOR TO DO THE FOLLOWING: This debtor is subject to Wage Garnishment Request which means that you will be required to complete a worksheet and submit payment of up to 25% to the State of Michigan Unemployment Insurance Agency (UIA) each pay period. You will receive a monthly voucher and worksheet to remit payment. You will complete the worksheet for each pay period to the UIA that represents the total of all the payment withheld from the debtor's paycheck(s). Each month's payment must be submitted to the UIA as long as you employ the debtor, or until you are notified by the UIA to suspend or discontinue deductions because the debt has been satisfied. During this process, if the claimant becomes unemployed from your company, please notify the UIA of this change in employment status either in writing or by phone. You may contact the Benefit Enforcement Unit at (313) 456-1360.



LARA is an Equal Opportunity Employer/Program.

Page 1 of 2 0000097



UIA 1141  
(Rev. 01-14)

Letter ID: L0014119209

## CERTIFICATION

I certify that I am the Employer, or authorized by the Employer, to complete this Wage Garnishment process and that I have answered completely and correctly to the best of my knowledge and belief. I understand that MCL 421.54(a) provides penalties for intentional failure to comply with the Wage Garnishment process provided under MCL 421.15 (n) of up to three times the amount involved, and/or community service, and/or imprisonment.

Tammy O'Keefe  
Signature of Employer or Designee

Tammy O'Keefe  
Print Name

Versure HR Inc  
Business Name

10-9-14 480-913-2650  
Date Telephone

Page 62 of 66 [48/08/2018 3:38:30 PM [Eastern Daylight Time] From: 248-247-3310]



LARA is an Equal Opportunity Employer/Program.

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RECEIVED by MSC 9/9/2020 8:16:51 PM

UJA 1147  
(Rev. 01-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Department of Licensing and Regulatory Affairs  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/ujia



Authorized By  
MCL 421.1 et seq.  
Sharon Moffatt-Massey  
DIRECTOR

RECEIVED

DEC 22 2014

Mail Date: December 16, 2014

Letter ID: L0016025934

FEIN: 272887196

Name: HANBON MI II INC

VENSURE HR INC  
4140 E BASELINE RD STE 201  
MESA AZ 85208-4414

*no wages since 9-26-14*

## Wage Garnishment Payment Request

FRANK LUCENTE, SSN: 374-82-4837, is in your employ and has received a determination from the Unemployment Insurance Agency (UIA) that they were overpaid unemployment benefits. The total balance which consists of overpaid benefits, interest, and penalty (if applicable) are now due. Based on an agreement signed by all parties involved, payment should be withheld from this individual's paycheck and sent into the UIA to be applied toward their debt.

Prior to completing the included worksheet(s), make additional blank copies or print a copy of this form through your online MIVAM account. Go to the letters tab, then go to the garnishment letters tab. Please complete the worksheet(s) with a breakdown of this individual's payment amount for each pay period and send the worksheet(s) separate from the payment to the following address:

Mail the worksheet(s) to:

Benefit Enforcement Unit

PO Box 169

Grand Rapids MI 49501-0169

Please submit the monthly payment for the total withheld for the month by using the voucher below. Do not send cash. Make your check or money order payable to: State of Michigan. Write the Claimant's MIN, as seen on the voucher below, on your check or money order so all accounts are properly credited.

Mail payment to:

Unemployment Insurance Agency - Restitution

Dept #771760

PO Box 77000

Detroit, MI 48277-1760

For questions, call the Benefit Enforcement Unit by phone at (313) 458-1360 from 9:00 a.m. to 3:00 p.m. Eastern Time Monday through Friday or you may e-mail them at BEU@Michigan.Gov.

Please cut and return bottom portion with your payment.

## Unemployment Insurance Agency Payment Voucher

VENSURE HR INC  
4140 E BASELINE RD STE 201  
MESA AZ 85208-4414

*\*no wages since 9-26-14*  
*Tammy Orkoff*  
*#304932650*

Letter ID: L0016025934  
Statement Date: 18-Dec-2014  
Claimant MIN: D337484032  
Media Number: 1048853441 G

State of Michigan  
Unemployment Insurance Agency - Restitution  
Dept #771760  
PO Box 77000  
Detroit, MI 48277-1760

Amount Enclosed: \$

G 00000000000000 0337484032 01048853441 G



UIA 1147  
(Rev. 01-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Department of Licensing and Regulatory Affairs  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/UIA



Authorized By  
MCL 421.1 et seq.  
Sharon Moffitt-Merney  
DIRECTOR

RECEIVED

JAN 22 2015

*terminated*

Mail Date: January 18, 2015  
Letter ID: L0017278731  
FEIN: 272887198  
Name: HANBON MI II INC

VENSURE HR INC  
4140 E BASELINE RD STE 201  
MEBA AZ 85208-4414

### Wage Garnishment Payment Request

FRANK LUCENTE, SSN: 374-62-4837, is in your employ and has received a determination from the Unemployment Insurance Agency (UIA) that they were overpaid unemployment benefits. The total balance which consists of overpaid benefits, interest, and penalty (if applicable) are now due. Based on an agreement signed by all parties involved, payment should be withheld from this individual's paycheck and sent into the UIA to be applied toward their debt.

Prior to completing the included worksheet(s), make additional blank copies or print a copy of this form through your online MiWAM account. Go to the letters tab, then go to the garnishment letters tab. Please complete the worksheet(s) with a breakdown of this individual's payment amount for each pay period and send the worksheet(s) separate from the payment to the following address:

Mail the worksheet(s) to:  
Benefit Enforcement Unit

PO Box 169  
Grand Rapids MI 49501-0169

Please submit the monthly payment for the total withheld for the month by using the voucher below. Do not send cash. Make your check or money order payable to: State of Michigan. Write the Claimant's MIN, as seen on the voucher below, on your check or money order so all accounts are properly credited.

Mail payment to:  
Unemployment Insurance Agency - Restitution  
Dept #771760  
PO Box 77000  
Detroit, MI 48277-1760

For questions, call the Benefit Enforcement Unit by phone at (313) 458-1360 from 9:00 a.m. to 3:00 p.m. Eastern Time Monday through Friday or you may e-mail them at BEU@Michigan.Gov.

Please cut and return bottom portion with your payment.

### Unemployment Insurance Agency Payment Voucher

VENSURE HR INC  
4140 E BASELINE RD STE 201  
MEBA AZ 85208-4414

*\*Employee was  
terminated on  
9-26-14.*

Letter ID: L0017278731  
Statement Date: 18-Jan-2015  
Claimant MIN: 0337484032  
Media Number: 824668284 G

State of Michigan  
Unemployment Insurance Agency - Restitution  
Dept #771760  
PO Box 77000  
Detroit, MI 48277-1760

Amount Enclosed: \$

6 000000000000 0337484032 0624668284 3

## EXHIBIT 13

### Denial of Request for Reconsideration



State of Michigan  
Talent Investment Agency  
Unemployment Insurance Agency  
5024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/tia



Authorized By  
MOL 421.1 #184  
Sharon Moffatt-Morsey  
DIRECTOR

Mail Date: January 19, 2016  
Letter ID: L0026867876  
CLM: C3366085-4  
Name: FRANK LUCENTE

Claimant: FRANK LUCENTE  
SSN: [REDACTED]

### REQUEST FOR RECONSIDERATION OR REDETERMINATION

The Agency has issued a determination that was issued more than one year ago. The determination was received on January 11, 2016 and the (re)determination was received on January 11, 2016.

Under the MFS Act, whenever a request for reconsideration or redetermination is not received within one year from the date of the determination, the Unemployment Insurance Agency (UIA) will deny the request. For this reason, your request for redetermination is not valid within the statutory time limitation.

If you wish to appeal for a redetermination or reconsideration, you must file an appeal on Administrative Law (AL) form 100, or a W-100, by mail or fax. Any appeal must be filed with the UIA within 30 calendar days from the date of the determination, excluding any holiday, or Agency business day. If you are a member of the Unemployment Insurance Agency, you may also file an appeal with the Agency.



7

**Customer**  
FRANK LUCENTE: \*4637

Menu New Manager

CUSTOMER: CLAIMANT Update PBA Update Collapse

**BENEFIT OVERPAYMENT**

Balance : 23,662.56 Customer FRANK LUCENTE  
SSN : 374-82-4637 17371 KINGSBROOKE CIR APT 102 CLINTON TOWNSHIP MI 48038-3758  
Date of Birth : 10-Aug-1972

RECENT NOTES Add Hide Related View All OPEN TASKS View All

HEARING PREP APPEAL DOCKET #16-014804 Nonmonetary Nonmonetary Issue  
HEARING PREP APPEAL DOCKET #16-014572 Nonmonetary Nonmonetary Issue  
F.O.I.A. Labor: Review and separate exempt from non-exempt materials - redacted time = 45 minutes. Benefits Delinquent

CLAIMS SUMMARY CRM TASK COLLECTION **FINANCIAL** ADJUSTMENT WEB

CERTIFICATIONS PAYMENTS<sup>24</sup> **BENEFIT PAYMENTS<sup>24</sup>** INTERCEPTS<sup>24</sup> TRANSACTIONS<sup>24</sup> CLAIMANT LOG<sup>24</sup>

Payments Vouchers

**PAYMENTS** Date From All Show History Filter

Status	Trans Type	Claim	Claim Type	Week	Posted	Effective	Amount	Reversed
Posted	Elective Payment	C3366085-4	Extensions	20-Feb-2010	30-Oct-2015	29-Oct-2015	102.48	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	23-Oct-2015	22-Oct-2015	96.78	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	16-Oct-2015	15-Oct-2015	83.63	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	08-Oct-2015	08-Oct-2015	147.97	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	01-Oct-2015	30-Sep-2015	148.90	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	25-Sep-2015	25-Sep-2015	181.49	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	21-Sep-2015	21-Sep-2015	22.72	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	14-Sep-2015	12-Sep-2015	72.53	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	03-Sep-2015	03-Sep-2015	127.33	
	Garnishment Payment	C3366085-4	Extensions	20-Feb-2010	24-Aug-2015	13-Aug-2015	111.14	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	21-Aug-2015	21-Aug-2015	189.54	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	07-Aug-2015	06-Aug-2015	1.00	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	30-Jul-2015	30-Jul-2015	123.53	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	23-Jul-2015	23-Jul-2015	122.31	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	23-Jul-2015	23-Jul-2015	118.17	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	16-Jul-2015	16-Jul-2015	157.93	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	07-Jul-2015	06-Jul-2015	82.70	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	25-Jun-2015	24-Jun-2015	158.64	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	17-Jun-2015	17-Jun-2015	92.53	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	11-Jun-2015	11-Jun-2015	167.12	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	01-Jun-2015	01-Jun-2015	165.58	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	28-May-2015	28-May-2015	83.61	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	11-May-2015	11-May-2015	164.78	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	11-May-2015	11-May-2015	181.92	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	28-Apr-2015	27-Apr-2015	99.68	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	30-Mar-2015	30-Mar-2015	180.18	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	24-Mar-2015	23-Mar-2015	70.42	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	17-Mar-2015	16-Mar-2015	157.93	
	Garnishment Payment	C3366085-4	Extensions	20-Feb-2010	04-Mar-2015	16-Jan-2015	87.86	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	16-Jan-2015	16-Jan-2015	174.33	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	05-Jan-2015	05-Jan-2015	134.41	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	30-Dec-2014	29-Dec-2014	167.20	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	25-Dec-2014	23-Dec-2014	97.37	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	16-Dec-2014	15-Dec-2014	129.41	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	11-Dec-2014	10-Dec-2014	254.61	
	Garnishment Payment	C3366085-4	Extensions	20-Feb-2010	10-Dec-2014	18-Sep-2014	118.25	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	02-Dec-2014	01-Dec-2014	77.39	
	Elective Payment	C3366085-4	Extensions	20-Feb-2010	26-Nov-2014	25-Nov-2014	98.39	

74 Rows 8,267.44



## PAYMENTS

Date From: All Show History Filter

Status	Trans Type	Claim	Claim Type	Week	Posted	Effective	Amount	Reversed
	Elective Payment	C3366085-5	Extensions	15-May-2010	29-Feb-2018	28-Feb-2016	48.08	
	Elective Payment	C3366085-5	Extensions	15-May-2010	08-Feb-2016	08-Feb-2016	5.19	
	Elective Payment	C3366085-5	Extensions	15-May-2010	15-Jan-2016	15-Jan-2016	152.43	
	Elective Payment	C3366085-5	Extensions	15-May-2010	11-Jan-2016	09-Jan-2016	77.18	
	Elective Payment	C3366085-5	Extensions	15-May-2010	05-Jan-2016	04-Jan-2016	197.88	
	Elective Payment	C3366085-5	Extensions	15-May-2010	28-Dec-2015	26-Dec-2015	105.50	
	Elective Payment	C3366085-5	Extensions	15-May-2010	14-Dec-2015	13-Dec-2015	237.41	
	Garnishment Payment	C3366085-5	Extensions	15-May-2010	09-Dec-2015	05-Dec-2015	166.60	
	Elective Payment	C3366085-5	Extensions	15-May-2010	30-Nov-2015	27-Nov-2015	177.04	
	Elective Payment	C3366085-5	Extensions	15-May-2010	23-Nov-2015	20-Nov-2015	81.02	
	Elective Payment	C3366085-5	Extensions	15-May-2010	05-Nov-2015	05-Nov-2015	15.62	
	Elective Payment	C3366085-5	Extensions	15-May-2010	30-Oct-2015	29-Oct-2015	37.51	
	Elective Payment	C3366085-5	Extensions	15-May-2010	28-Nov-2014	25-Nov-2014	58.75	
	Elective Payment	C3366085-5	Extensions	15-May-2010	21-Nov-2014	20-Nov-2014	153.90	
	Elective Payment	C3366085-5	Extensions	15-May-2010	12-Nov-2014	11-Nov-2014	80.51	
	Elective Payment	C3366085-5	Extensions	15-May-2010	07-Nov-2014	06-Nov-2014	221.87	
	Elective Payment	C3366085-5	Extensions	15-May-2010	29-Oct-2014	28-Oct-2014	152.23	
	Elective Payment	C3366085-5	Extensions	15-May-2010	24-Oct-2014	23-Oct-2014	157.22	
	Elective Payment	C3366085-5	Extensions	15-May-2010	14-Oct-2014	11-Oct-2014	157.22	
	Garnishment Payment	C3366085-5	Extensions	15-May-2010	09-Oct-2014	01-Oct-2014	57.89	
	Elective Payment	C3366085-5	Extensions	15-May-2010	06-Oct-2014	04-Oct-2014	64.10	
	Garnishment Payment	C3366085-5	Extensions	15-May-2010	23-Sep-2014	09-Sep-2014	6.42	
	Garnishment Payment	C3366085-5	Extensions	15-May-2010	09-Sep-2014	03-Sep-2014	145.59	
	Elective Payment	C3366085-5	Extensions	15-May-2010	28-Aug-2014	12-Aug-2014	91.11	
	Elective Payment	C3366085-5	Extensions	15-May-2010	26-Aug-2014	26-Aug-2014	51.72	
	Garnishment Payment	C3366085-5	Extensions	15-May-2010	07-Aug-2014	06-Aug-2014	52.15	
	Elective Payment	C3366085-5	Extensions	15-May-2010	31-Jul-2014	30-Jul-2014	153.14	
	Elective Payment	C3366085-5	Extensions	15-May-2010	21-Jul-2014	19-Jul-2014	108.19	
	Elective Payment	C3366085-5	Extensions	15-May-2010	16-Jul-2014	15-Jul-2014	92.37	
	Elective Payment	C3366085-5	Extensions	15-May-2010	08-Jul-2014	07-Jul-2014	99.91	
	Elective Payment	C3366085-5	Extensions	15-May-2010	17-Jun-2014	17-Jun-2014	51.72	
	Garnishment Payment	C3366085-5	Extensions	15-May-2010	12-Jun-2014	11-Jun-2014	35.80	
	Elective Payment	C3366085-5	Extensions	15-May-2010	30-May-2014	30-May-2014	94.05	
	Elective Payment	C3366085-5	Extensions	15-May-2010	27-May-2014	23-May-2014	0.60	
	Elective Payment	C3366085-5	Extensions	15-May-2010	20-May-2014	20-May-2014	40.00	
	Elective Payment	C3366085-5	Extensions	15-May-2010	09-May-2014	09-May-2014	47.54	

74 Rows

8,267.44



State of Michigan  
Department of Energy, Labor & Economic Growth  
UNEMPLOYMENT INSURANCE AGENCY  
www.michigan.gov/ula



Authorized by  
MCL 421.1, et seq.

See "For Employers"  
at bottom of reverse  
side for non-  
compliance penalty.

**REQUEST FOR INFORMATION RELATIVE TO POSSIBLE  
INELIGIBILITY OR DISQUALIFICATION**

Office: L0035

ADDRESSEE

Frank Lucente  
PO BOX 3083  
Center Line, MI 48015

Mail Date: 07/07/10

RETURN FORM TO:

Unemployment Insurance Agency  
P.O. Box 169  
Grand Rapids, MI 49501-0169  
Fax Number: 1-517-636-0427

Inquiry Line: 1-866-500-0017  
TTY Customers Use: 1-866-366-0004

Unemployed Worker's Name:  
Frank Lucente

Employer Name: DART PROPERTIES II LLC  
Account Number: 1562346000

SSN: 374-82-4637  
Benefit Year Beginning: 07/27/08

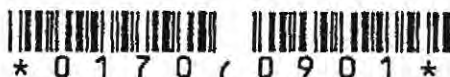
You are involved in a claim for unemployment benefits, either as the employer or as the unemployed worker. The Unemployment Insurance Agency (UIA) needs the information below in order to make a determination on eligibility or qualification for benefits.

Please answer all the questions below. If additional space is needed, enter your answers on the back of this form or attach additional sheet(s) if necessary. If a question does not apply or you choose not to answer it, enter "n/a" (not applicable). In completing this form, provide in complete and specific detail all information you believe would be helpful to us. If a reply is not received by the UIA within 10 days of the Mail Date shown above, a (re)determination will be made on the basis of the available information. Mail or fax your answers to the return location indicated on the top of this form. You should keep a copy of the completed form for your records.

The Agency was notified that you were discharged for violation of company policy.

1. On what date were you fired?
2. Who fired you? Provide name and title.
3. What reason were you given for being fired?
4. Provide specific details of what you did to violate company policy.
5. On what date did the incident occur which caused you to be fired?
6. Did you receive any warnings, verbal or written, before you were fired? If yes, provide dates and reasons for warnings.

Continued on the next page



DELEG is an equal opportunity employer/program.

070610H00 09013640052079

EN22\_00ZCFVCAUWF3K97

Please use En-22 for mailing



**Employer Name:** DART PROPERTIES II LLC  
**Employer Account Number:** 1562346000

7. Were other employees discharged at the same time for the same reason? If yes, provide name(s).
8. When were you made aware of the policy?
9. Did you receive a copy of the company policy?
10. Provide any additional facts regarding this separation.

**Your signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Phone: \_\_\_\_\_

**FOETIA Use Only**

070610H00P403 369 0052080

EN22\_00ZCFV3AUWF3K97

A-2

(Rev. 07/00)

STATE OF MICHIGAN  
Department of Energy, Labor & Economic Growth  
UNEMPLOYMENT INSURANCE AGENCYSee "For Employers" at bottom for non-compliance penalty.  
Office No. 023REQUEST FOR INFORMATION RELATIVE TO POSSIBLE  
INELIGIBILITY OR DISQUALIFICATION

Authorized by MCL 421.1, et seq.

RECEIVED JUL 09 2010

DART PROPERTIES II LLC  
500 HOGSBACK ROAD  
MASON MI 48854-9541BYB: 07/27/2008  
UNEMPLOYED WORKER  
LUCENTE

138

FRANK

RETURN FORM TO:  
UNEMPLOYMENT INSURANCE AGENCY  
PO BOX 169  
GRAND RAPIDS MI 49501-0169  
FAX NUMBER: 1-517-636-0427Inquiry Line: 1-866-500-0017  
TTY Customer: 1-866-366-0004

EMPLOYER NUMBER: 1562346 000

You are involved in a claim for unemployment benefits, either as the employer or as the unemployed worker. The Unemployment Insurance Agency (UIA) needs the information below in order to make a determination on eligibility or qualification for benefits.

Please answer all the questions below. If additional space is needed enter your answers on the back of this form or attach additional sheet(s) if necessary. If a question does not apply or you choose not to answer it, enter "n/a" (not applicable). In completing this form provide in complete and specific detail all information you believe would be helpful to us. If a reply is not received by the UIA within 10 days of the Date Mailed shown below, a (re)determination will be made on the basis of the available information. Mail or fax your answers to the return location indicated on the top of this form. You should keep a copy of the completed form for your records.

PROVIDE COMPLETE DETAILS REGARDING THE CLAIMANT'S SEPARATION.

PLEASE LIST ALL DISCIPLINARY ACTION(S) INITIATED PRIOR TO SEPARATION.

WAS THE CLAIMANT SEPARATED FOR VIOLATION OF COMPANY RULE(S)? WHAT IS/ARE THE RULE(S)? HOW WAS THE CLAIMANT MADE AWARE OF SUCH RULE(S)?

PLEASE SEND A COPY OF COMPANY POLICY AND/OR CONTRACT PROVISIONS THAT SUPPORT YOUR ACTION(S).

Date Mailed Month 07 Day 07 Year 2010 Interviewer A. ADJUD TASK FORCE

## YOUR ANSWERS

If necessary, continue on reverse side.

See attached

\* 3 7 4 8 2 4 6 3 7 U C 1 7 - 7 0 7 2 7 2 0 0 8 \*



071610G0010802340052082

1. The claimant is not separated. He has been working for us continuously since 2/16/10.
2. N/A
3. N/A
4. N/A

RECEIVED by MSC 9/9/2020 8:16:51 PM

STATE FORM  
(Rev. 07/08)  
Revised 5/09

Unemployed

Worker's Name:

FRANK LUCENTE

Employer Name:

DART PROPERTIES II LLC

SSN:

Employer Account Number: 1562346 000

Benefit Year Beginning: 07/27/2008

Continue your answers here. Attach additional sheets, if necessary.

07/16/10 G00 1030 300 40052083

**UNEMPLOYED WORKER:** You are required to respond to this form within 10 days of the Date Mailed shown on the front of this form.

Most recent occupation \_\_\_\_\_ ☐ Full-time ☐ Part-time Work schedule \_\_\_\_\_Your first day worked: \_\_\_\_\_ Last day worked: \_\_\_\_\_ Most recent wage: \_\_\_\_\_  
☐ Hourly ☐ weekly

Your name (please print) \_\_\_\_\_ Phone: ( ) \_\_\_\_\_

Your Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FOR EMPLOYERS:** You are requested to respond to this form within 10 days of the Date Mailed shown on the front of this form, whether you feel payment(s) on this claim should be allowed or denied. If you fail to respond timely, you will not receive credit for benefits paid prior to receipt of the information, even if the unemployed worker is later found ineligible or disqualified. Please provide the following additional information

First day worked: 2-16-10 Last day worked: n/a Date removed from payroll: n/aYour Name and Title (please print): Nancy LairdYour signature: Nancy Laird Date: 7-16-10Phone: (506) 979-4110

Visit us on the Internet at [www.michigan.gov/ula](http://www.michigan.gov/ula)  
DELEG is an Equal Opportunity Employer/Program.





D-1  
(2-40)**GWINN TAURIAINEN PLLC**

Attorneys and Counselors at Law  
901 Wilshire Drive, Suite 550  
Troy, MI 48084  
(248) 247-3300  
(248) 247-3310 facsimile  
[www.gwinntauriainenlaw.com](http://www.gwinntauriainenlaw.com)

Daniel A. Gwinn  
[daniel@gwinnlegal.com](mailto:daniel@gwinnlegal.com)

Karl L. Tauriainen  
[kari@gwinnlegal.com](mailto:kari@gwinnlegal.com)

January 29, 2018

**VIA FACSIMILE ONLY (517) 838-0427**

State of Michigan  
LARA - Unemployment Insurance Agency  
P.O. Box 169  
Grand Rapids, MI 49501-0169

Re: Frank Lucente, Claimant  
SS: [REDACTED]  
Claimant MIN: 0337484032

Dear Agency Representative:

Our office represents Frank Lucente. Mr. Lucente requests a waiver of payment of the \$26,984 penalty against him on grounds of hardship and in the interest of "equity and good conscience" under MCL 421.82(a).

Mr. Lucente's receipt of benefits for which he was later found to be ineligible was not the result of a deliberate act or omission made with fraudulent intent, but of a misunderstanding of the law. Waiver of the penalties is therefore permitted by statute. Mr. Lucente has repaid the \$6,986 in benefits received, and has also begun to pay off the quadruple penalty imposed.

"Equity and good conscience" also require a waiver where it appears both that repayment would be a financial hardship and that, as shown below, due in part to the automation of the Unemployment Insurance Agency's (UIA) process, Mr. Lucente was in ignorance of the redetermination of his benefits and the penalty until several years after that determination had been made, as all notices were sent to addresses that were incorrect or outdated. Although the Agency's original redetermination was made in 2010,

08011640052084

RECEIVED by MSC 9/9/2020 8:16:51 PM

GWINN TAURIAINEN PLLC

Frank Lucente

Page 2

the Agency's letter advising Mr. Lucente of this fact sent to an address at which Mr. Lucente, who was briefly homeless and consistently transient from 2009 to 2011, did not reside. Mr. Lucente did not become aware of the UIA's redetermination or the quadruple penalty until 2014, when this Agency began garnishing his wages. He did not see a summary of his indebtedness until November 2015, when this Agency sent him a copy of a Non Protestable Summary of Previously (Re) Determined Restitution. By the time Mr. Lucente learned of the Agency's findings, the period for an appeal had expired.

Finally, Mr. Lucente requests waiver of the penalty because imposition of the penalty is an overly harsh response for the conduct alleged and the circumstances of the Claimant.

Mr. Lucente asks this Agency to consider the facts in this case, that demonstrate Mr. Lucente's lack of fraudulent intent, his low income, the uncured misdirection of Agency correspondence resulting in part from Agency automation, and the mechanical imposition of the maximum fine without consideration of the circumstances of the claim or the Claimant, all of which render a requirement that Mr. Lucente pay the quadruple penalty, in full, neither fair nor equitable, under MCL 421.62(a) and require a waiver on the grounds of hardship and simple justice

#### FACTS

The Great Recession of 2008–2010 claimed many victims. Claimant Frank Lucente was one of them.

In July 2008, he lost his job as a maintenance worker with Helm in Highland Park, Michigan and applied for unemployment benefits through Michigan's Unemployment Insurance Agency (UIA), receiving \$382 per week. In February 2009, he made an emergency application for additional benefits. In September 2009, still out of work, he filed for and received extended benefits. But it wasn't nearly enough.

After he lost his job, things went downhill for Claimant. Without a job, he was unable to pay his rent and was evicted. For several months he stayed with family and friends; he became depressed and anxious, and began to suffer from panic attacks – depression and anxiety that continue to plague him. He retreated from the people who would help him. He hit rock bottom in mid-2009, moving into Matt's Salvation Army on 10 Mile and Mound in Warren, before a friend took him in, and allowed him to pay a modest rent on a shared apartment. But it was a short-term solution; Mr. Lucente continued to move from place to place for over a year.

In February 2010 Claimant found a job as an apartment manager with Dart Properties in Mason, Michigan. He began working on February 16, 2010. To receive

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extended benefits, Claimant had been required to file a weekly record of his search for work, listing all employers contacted; he continued to look for work after he started at Dart Properties. Because he would not receive any pay from his new employer until the next pay period, Claimant believed he was still eligible for extended benefits and submitted his weekly record, as usual, for the weeks ending February 20 and February 27. Once he started to receive a pay check from Dart, he stopped submitting a weekly record of his work search and made no additional requests for extended benefits.

However, he continued to certify his eligibility on MARVIN until his weeks of eligibility expired in June 2010, after which he made no further contact with the UIA. He erroneously believed that, once awarded, he was entitled to receive the funds set aside for his benefit year; they were not revocable.

In July 2010, the UIA contacted Claimant's employer and was informed Claimant had been working continuously since February 18, 2010 (Exhibit 1). On July 7, 2010, a Request for Information (Exhibit 2) was mailed to Claimant at a P.O. Box in Centerline. Mr. Lucente had cancelled his P.O. Box rental effective June 11, 2010; he never received the Request for Information. If he had done so, he would not have realized that he was in deep water: The Request for Information failed to state that, should Claimant's answers reveal evidence of fraud, he could face criminal prosecution and/or be held liable for sums equal to four times the amount of the UIA benefits he received after he began to work full time. MCL 421.54.

The UIA followed its Request for Information with a Notice of Redetermination (Exhibit 3) which stated, "You worked full-time for Dart Properties II LLC beginning 2/16/10. As such, you are ineligible for benefits under Section 48 of the MES Act. You were paid, so restitution is required, as shown, under section 62 of the Act." A "recreation" of this letter was sent to Claimant on November 23, 2015. Due to the UIA's conversion in 2013 from its mainframe system to the current system, MIDAS, original copies of determinations and redeterminations prepared on the old system are no longer available. However, the Unemployment Insurance Agency is able to "recreate a determination ... duplicating the exact information, including original mail dates shown on the original document." The recreated document fails to show the address to which the original was sent; the mail date shown on the recreated Notice of Redetermination is January 1, 2010 – over a month before Claimant found the job with Dart Properties. Another "recreated" Notice of Redetermination (Exhibit 4) – which also fails to show the address to which it was sent and bearing the same "original mail date" of January 1, 2010 – would have informed Claimant, had he received it, that his actions were considered intentional.

The copy of Claimant's file sent to this office by the agency on or around November 23, 2015 is incomplete; it contains a Summary of Previously (Re) Determined Restitution

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(Exhibit 5) but not an original Summary of Restitution. It has a request for garnishment directed to one of Claimant's recent employers (Exhibit 6), but not a copy of the request directed to his current employer (Claimant's wages are currently being garnished). Many of the re-created documents show the address to which they were sent on November 23, 2015, but not the address to which they were originally sent.

Although the Agency received no answer to any of its mailings, it apparently continued to the next stage of the process (the file received by this office appears to be incomplete): According to UIA files, the Non-Protestable Summary of Previously (Re) Determined Restitution was sent on December 1, 2010 (the date on the recreated document). The penalty amount on this Summary is listed as \$18,278.00, the principal – the amount Claimant was overpaid – is \$4,794.

In February and March 2012 the Agency sent Claimant two Notice(s) of Payment Due to an address on Denton Street in Clinton Township (Exhibit 7). Claimant did not live at that address; he did not receive the letters. In April and May 2012 the UIA sent a Second Notice of Payment Due and a Final Notice of Payment Due, both to the Centerline P.O. Box (Exhibit 8), an indication that the first two letters may have been returned. Mr. Lucente no longer rented the mailbox; the mail would not have been forwarded. On these documents, the amount due is listed as an overpayment of \$6,966 and a penalty of \$28,964. The interest is listed as "0." No document indicating the reason for the dramatic increase is contained in Claimant's UIA file.

In May 2013, Claimant was let go from his job with Dart Properties.

On October 29, 2013, the UIA sent Claimant a Notice of Garnishment. The address on the duplicate of this letter, contained in the copy of Claimant's UIA file, is the P.O. Box in Centerline. There is no signed copy of this document in the file. In December 2013 the UIA sent payment vouchers to Mr. Lucente; the vouchers were sent to the Centerline P.O. Box. Although Claimant's UIA file does not contain the UIA's full correspondence with Mr. Lucente's employers requesting garnishment, the Agency began garnishing his wages in 2014, shortly after he began to work for Vensure, Inc. A wage garnishment request and order, signed and dated by a Tammy O'Keefe at Vensure on April 23, 2014 is contained in Claimant's UIA file.

Claimant first learned of the findings against him in the summer of 2014, when his then-employer, Vensure, informed him they had received a request for garnishment.

Since August 2014, he has repaid the entire principal, but has been unable to make much of a dent in the penalty. Claimant's current take-home pay is about \$3,000 a month. From this, he must pay \$785 in child support, \$625 in rent, \$431 for a used car, \$285 for car insurance, \$130 in health insurance, \$170 in credit card debt, and roughly \$850 for

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utilities, phone, Internet, gasoline, food and clothing. Claimant has cut his expenses to the bone, and is only just able to make ends meet; the additional burden of the UIA penalty prevents him from moving forward and becoming the responsible citizen he was before he lost his job in 2008.

### ARGUMENT

I. Mr. Lucente should not be required to pay a quadruple penalty and waiver is proper where his actions in continuing to certify on MARVIN were based on a mistaken understanding of his benefit eligibility.

From late February to June 2010 Claimant continued to certify his eligibility to receive benefits and continued to receive benefits from the UIA, despite the fact he was working full-time. Claimant, suffering from severe depression and anxiety in 2010 after two years without work, believed that the benefits, once awarded, belonged to him. He did not realize – as he should have – that his benefits ended when he began to work full time.

When Claimant received the money from the UIA, he believed it was "his" and accepted it under a claim of right. His intent was not to defraud, but to retain control of something that belonged to him. As such, his actions – while ill-advised and ill-informed – lacked the necessary element of intent to qualify as fraud. Thus, waiver may be proper under MCL 421.62 as the incorrect information provided to the UIA was not made with fraudulent intent.

II. Mr. Lucente should not be required to pay a quadruple penalty, and waiver is proper in the interest of equity where no consideration of the facts of the alleged offense or the circumstances of the offender were made before the maximum penalty was imposed and where a quadruple penalty is contrary to "equity and good conscience" under MCL 421.62a.

The statute outlining the penalties for a making a "knowing false statement or representation or the knowing and willful failure to disclose a material fact" in order to receive unemployment benefits requires restitution of the full amount received as a result of this fraud. However, the imposition of additional penalties is permissive; the statute states that the agency *may* also recover damages equal to 4 times "the amount obtained by the false statement. MCL 421.54(b)(ii) (emphasis added). The Agency may also refer the case to the prosecutor, who may then seek recovery of the overpayment amount

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(restitution) and also request imposition of a term of prison for not more than one year, or may require the performance of up to 2,080 hours (no more than one year) of community service, MCL 421.54(b)(iii)(A)(i) and (ii).

Assuming, for the sake of argument, that Mr. Lucente acted with fraudulent intent, the amount of the penalty is out of proportion to the crime committed and its automatic imposition without consideration of Mr. Lucente's circumstances not only violates the basic tenets of justice but also amounts to discrimination based on wealth violating the equal protection clause and, further, is an excessive fine, contrary to the Eighth Amendment.

Mr. Lucente works in maintenance. His income is above the federal poverty level, but it is only just above the bottom economic quintile. While paying fines totalling over \$30,000 might be unwelcome to a white collar professional, to a man like Mr. Lucente it is a financial disaster. The statute clearly recognizes that the ability of the Claimant to pay a penalty is a factor that must be considered before the UIA demands payment of quadruple the restitution amount. It is because this factor must be considered that the statute gives the Agency discretion on whether or not to seek imposition of a penalty, and, if imposed, the size of the penalty. It is why the prosecutor may ask that a Claimant found guilty of making misleading statements to the UIA serve a prison term, or simply serve community service. And it is a factor that was not considered in this case.

The automated system currently used by the UIA, while allowing the agency to process more claims more quickly, does not have the ability to review the particular facts of each case and each Claimant. This inability sometimes results, as it has in this case, in a penalty that is effectively a sentence to life on the financial edge, and violates the spirit and purpose of the Michigan Employment Security Act, "to safe guard the general welfare by dispensing benefits to ameliorate the disastrous effects of involuntary unemployment." *Schultz v Oakland County*, 187 Mich App 98, 102-103 (1991). Mr. Lucente fully experienced these disastrous effects; in the depth of that disaster is the origin of his wishful belief that he could continue to receive benefits while working.

A court, when imposing sentence in a criminal case, should ensure the sentence is "tailored to the particular circumstances of the case and the offender in an effort to balance both society's need for protection and its interest in maximizing the offender's rehabilitative potential." *People v McFarlin*, 388 Mich 557, 574 (1973). In the present case, no consideration has been made of Mr. Lucente's particular circumstances. As for reformation, since he learned of the actions taken against him, Mr. Lucente has not only been made aware how misguided was his belief that he could continue to collect benefits while working, but has paid a high price for his actions – which resulted in rendering him destitute when he was again unemployed – and has repaid the state for the money he

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wrongly received. He got the message. To require payment of the penalty will prevent Mr. Lucente from moving forward and thus impede his "rehabilitative potential."

In the criminal context, the Michigan legislature recognized more than 10 years ago with Public Acts 665, 666 and 670 of 2002, that placing a defendant on probation for life is itself an injustice, a sentence that restricts a defendant's reasonable life choices far beyond that merited by the misconduct and often needlessly requires continued supervision. The penalty here is analogous to lifetime probation – it will continue long after Mr. Lucente has "learned his lesson" and, like lifetime probation, will operate as a continual bar to his full participation in society.

The penalty imposed here not only failed to consider Mr. Lucente's ability to pay, but is also out of proportion to the crime committed. If Claimant had committed a *larceny* of an item valued between \$1,000 and \$20,000, the maximum sentence he could face would be five years in prison or a fine of "not more than \$10,000 or three times the value of the property stolen." MCL 750.356(3)(a). Here, where the property taken was that which the state was willing to award him, as long as he was out of work, he is subject to a penalty of *four times* the amount he received, plus interest – in addition to repayment of the original amount. The punishment for this crime – a crime against which he was unable to defend himself in court, a right that would have been his if he had stolen money from a business or someone's home – will be unending. Claimant does not have the resources to pay \$125 every month, a repayment that would take him decades.

For these reasons, Mr. Lucente ask that this Agency grant him waiver of the remaining penalty and accept the full restitution Mr. Lucente has already paid and his payments toward the penalty as payment in full and consider the matter closed.

III. The penalty against Mr. Lucente must be waived where Mr. Lucente was denied his due process rights to present facts in defense or mitigation where he never received notice of the UIA's finding that he had been ineligible for the benefits he received, its finding he had been guilty of fraud, and its decision to demand full restitution and a quadruple penalty until several years after the conduct alleged.

The United States government, through the Department of Labor, provides monetary grants to states, including Michigan, in support of state unemployment insurance programs. Federal law establishes minimum due process requirements for states receiving these grants. As outlined in 26 USC Section 6402(f)(3), states (like Michigan) that accept funding for unemployment programs from the federal government are barred from pursuing collection of unemployment compensation debts, including penalties, through collection actions and the interception of federal income tax refunds,

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unless certain steps are taken with regard to notice, consideration of evidence, and a fair opportunity to be heard. States must provide specific notice, afford claimants at least 60 days to present evidence and consider evidence from the claimant in determining whether the alleged fraud or other overpayment debt can be enforced.

These minimum due process requirements must be afforded to all claimants, regardless of whether or not the claimants are ultimately determined to be "guilty" or "innocent" of obtaining UIA benefits through fraud or other improper means.

At the time the UIA first wrote Claimant, requesting information, his benefit year had expired. Mr. Lucente believed his relationship with the UIA was at an end and he therefore had no obligation to keep the UIA apprised of his current address. Once a claimant's benefits have been exhausted, he or she has no obligation to inform the UIA of current address or any subsequent employment unless the claimant requests additional benefits. Mr. Lucente had no reason to keep the Agency informed of his address or employment.

Information sent to Mr. Lucente at the P.O. Box after June 11, 2010 (claimant can provide the UIA verification that the P.O. Box service had been stopped in June 2010) would have been returned to sender. The Agency failed to provide Mr. Lucente adequate notice of the actions taken against him; its finding that he was guilty of fraud and its decision to impose the maximum financial punishment for that fraud denied him his due process rights.

During the time the Agency mailed Claimant its request for information, its findings, its restitution summary, demands for payment and request for garnishment, Mr. Lucente had no fixed address, and did not receive any of these letters. The Agency was, or should have been, aware that its communications were not being received. Claimant can demonstrate he was not at the addresses to which the UIA sent these communications; the majority of these letters would have been returned to the Agency.

Specific notice requires more than sending a letter to a party's last known address, as shown by court rules requiring service by registered mail or personal service, MCR 2.105-106.

Where there has been no notice, the UIA cannot move from a Request for Information to a Final Payment Request. To do so, as here, denies the claimant his or her right to present evidence, and denies the UIA its right to consider this evidence, and to consider facts in mitigation of the conduct of which it complains and facts which would support a finding that a quadruple penalty is unreasonable given the circumstances of this Claimant.

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Where a UIA employee might have noted Mr. Lucente's apparent silence in response to its requests for information, and then for payment, no employee was given the opportunity to consider the issue: The Agency relies on an automated system, MiDAS. While this system enables the Agency to coordinate collection procedures with employers, other state agencies and the federal government and helps alert the Agency when there is information that might have some bearing on a claimant's qualification for benefits, its automated nature results in claimants being denied due process rights.

MiDAS does not provide claimants with specific notice of the basis for the UIA's suspicion of fraud or other culpable conduct. MiDAS does not include or allow for an actual fact-based adjudication of whether the claimant engaged in culpable disqualifying conduct; it does not allow a claimant 60 days in which to present evidence, and does not include or allow for consideration of evidence by the Agency. MiDAS, unlike an actual Agency employee, does not *think*; it cannot reason or question. It cannot respond to letters, it cannot weigh evidence, it cannot consider the particular circumstances of any claimant alleged to have been guilty of misrepresentation. It will continue from Step A of a process it initiates to Step B, then to Step C and then to a pre-set punishment without input from the claimant whose life will be affected by its automated findings.

The Agency erred in its reliance on its automated system, denying Mr. Lucente his due process rights. The Agency also erred, denying Mr. Lucente his right to review and question its findings, when it failed to provide him a complete copy of his UIA file.

Where Mr. Lucente was denied his due process rights by the Agency's failure to provide notice, to consider facts in mitigation, and to provide him with access to his complete file, the Agency's findings and the imposition of the maximum financial penalty are without support. Mr. Lucente, however, now understands that he was incorrect in his belief that he was entitled to the benefits he received while working; he acknowledges the Agency's right to reimbursement. However, where he was denied the opportunity to demonstrate that the penalty should have been waived because he lacked the requisite intent, and where he was denied the opportunity to present evidence that the quadruple penalty was excessive given his financial circumstances, and where he was denied the right to an appeal by a process that found him time-barred before he had even learned of the monetary penalties against him, that penalty must be waived.

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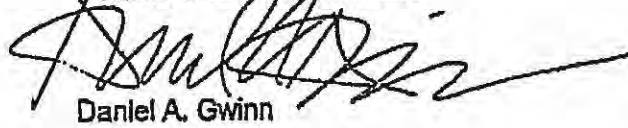
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Frank Lucente  
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If you have any questions, please call.

Very truly yours,

GWINN TAURIAINEN PLLC



Daniel A. Gwinn

Enclosures

cc: Frank Lucente

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EXHIBIT 1  
Letter from Dart

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HCFA 248-247-3310

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JUL 12 2010 09:08 585 579 2479

DART PROPERTIES

#2303 P.002 /004

(Rev. 07/09)

STATE OF MICHIGAN  
Department of Energy, Labor & Economic Growth  
UNEMPLOYMENT INSURANCE AGENCY

See "For Employees" at bottom for non-compliance penalty.  
Office No. 023

**REQUEST FOR INFORMATION RELATIVE TO POSSIBLE  
INELIGIBILITY OR DISQUALIFICATION**  
Authorized by MCL 421.1, et seq.

**RECEIVED JUL 09 2010**

**DART PROPERTIES II LLC  
500 HOGSBACK ROAD  
MASON MI 48354-9541**

**BYA: 07/27/2008 138  
UNEMPLOYED WORKER: 4637  
LUCENTE FRANK**

**RETURN FORM TO:  
UNEMPLOYMENT INSURANCE AGENCY  
PO BOX 185  
GRAND RAPIDS MI 49501-0169  
FAX NUMBER: 1-517-636-0427**

**Inquiry Line: 1-866-500-0017  
TTY Customer: 1-866-366-0004**

**EMPLOYER NUMBER: 1562346 000**

You are involved in a claim for unemployment benefits, either as the employer or as the unemployed worker. The Unemployment Insurance Agency (UIA) needs the information below in order to make a determination on eligibility or qualification for benefits.

Please answer all the questions below. If additional space is needed enter your answers on the back of this form or attach additional sheet(s) if necessary. If a question does not apply or you choose not to answer it, enter "n/a" (not applicable). In completing this form provide in complete and specific detail all information you believe would be helpful to us. If a reply is not received by the UIA within 10 days of the Date Mailed shown below, a (re)determination will be made on the basis of the available information. Mail or fax your answers to the return location indicated on the top of this form. You should keep a copy of the completed form for your records.

- PROVIDE COMPLETE DETAILS REGARDING THE CLAIMANT'S SEPARATION.
- PLEASE LIST ALL DISCIPLINARY ACTION(S) INITIATED PRIOR TO SEPARATION.
- HAS THE CLAIMANT SEPARATED FOR VIOLATION OF COMPANY RULE(S)? WHAT IS/ARE THE RULE(S)? HOW WAS THE CLAIMANT MADE AWARE OF SUCH RULE(S)?
- PLEASE SEND A COPY OF COMPANY POLICY AND/OR CONTRACT PROVISIONS THAT SUPPORT YOUR ACTION(S).

Date Mailed Month 07 Day 07 Year 2010 Interviewer A. ADJUD TASK FORCE

**YOUR ANSWERS**  
If necessary, continue on reverse side.

See attached

\* 3 7 4 8 2 4 3 7 U C 1 7 0 0 7 2 7 2 0 0 8 \*



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1. The claimant is not separated. He has been working for us continuously since 2/16/10.
2. N/A
3. N/A
4. N/A

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WPA 10/07  
(Rev. 07/08)  
Revised 08/08

Unemployed Worker's Name: **FRANK LUCENTE** Employer Name: **DART PROPERTIES II LLC**  
 SN: **4637** Employer Account Number: **1562346 000**  
 One Year Beginning: **07/27/2008**  
 Continue your story here. Attach additional sheets, if necessary.

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 08011540052097

**UNEMPLOYED WORKER:** You are required to respond to this form within 10 days of the Date Mailed shown on the front of this form.

Most recent occupation \_\_\_\_\_ ☐ Full-time ☐ Part-time Work schedule \_\_\_\_\_  
 Your first day worked: \_\_\_\_\_ Last day worked: \_\_\_\_\_ Most recent wage: \_\_\_\_\_  
☐ hourly ☐ weekly  
 Your name (please print) \_\_\_\_\_ Phone: ( ) \_\_\_\_\_  
 Your Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FOR EMPLOYERS:** You are requested to respond to this form within 10 days of the Date Mailed shown on the front of this form, whether you feel payment(s) on this claim should be allowed or denied. If you fail to respond timely, you will not receive credit for benefits paid prior to receipt of the information, even if the unemployed worker is later found ineligible or disqualified. Please provide the following additional information

First day worked: 2-16-10 Last day worked: n/a Date removed from payroll: n/a  
 Your Name and Title (please print): Nancy Laird  
 Your signature: Nancy Laird Date: 7-16-10  
 Phone: (508) 979-4110



Visit us on the Internet at [www.michigan.gov/wla](http://www.michigan.gov/wla)  
 DELEG is an Equal Opportunity Employer/Program.





EXHIBIT 2  
Request for Information

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UIA 1787a  
(Rev. 1-09)State of Michigan  
Department of Energy, Labor & Economic Growth  
UNEMPLOYMENT INSURANCE AGENCY  
www.michigan.gov/uiaAuthorized by  
MCL 421.1, 0100q.**REQUEST FOR INFORMATION RELATIVE TO POSSIBLE  
INELIGIBILITY OR DISQUALIFICATION**See "For Employers"  
at bottom of reverse  
side for non-  
compliance penalty.Office: L0035**ADDRESSEE**Frank Lucente  
PO BOX 3083  
Center Line, MI 48015

Mail Date: 07/07/10

**RETURN FORM TO:**Unemployment Insurance Agency  
P.O. Box 168  
Grand Rapids, MI 49501-0168  
Fax Number: 1-617-636-0427Inquiry Line: 1-888-500-0017  
TTY Customers Use: 1-888-366-0004Unemployed Worker's Name:  
Frank LucenteEmployer Name: DART PROPERTIES II LLC  
Account Number: 1562346000SSN: ~~000000000~~ 4837  
Benefit Year Beginning: 07/27/08

You are involved in a claim for unemployment benefits, either as the employer or as the unemployed worker. The Unemployment Insurance Agency (UIA) needs the information below in order to make a determination on eligibility or qualification for benefits.

Please answer all the questions below. If additional space is needed, enter your answers on the back of this form or attach additional sheet(s) if necessary. If a question does not apply or you choose not to answer it, enter "n/a" (not applicable). In completing this form, provide in complete and specific detail all information you believe would be helpful to us. If a reply is not received by the UIA within 10 days of the Mail Date shown above, a (re)determination will be made on the basis of the available information. Mail or fax your answers to the return location indicated on the top of this form. You should keep a copy of the completed form for your records.

The Agency was notified that you were discharged for violation of company policy.

1. On what date were you fired?
2. Who fired you? Provide name and title.
3. What reason were you given for being fired?
4. Provide specific details of what you did to violate company policy.
5. On what date did the incident occur which caused you to be fired?
6. Did you receive any warnings, verbal or written, before you were fired? If yes, provide dates and reasons for warnings.

Continued on the next page

\* 0 1 7 0 7 1 9 0 1 \*

DELEG is an equal opportunity employer/program.

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UIA 1707  
(Rev. 1-08)  
Reverse Side

Unemployed Worker's Name: Frank Lucania  
SSN: ~~000-00-0000~~ 4537  
Benefit Year Beginning: 07/27/08

Employer Name: DART PROPERTIES II LLC  
Employer Account Number: 1562346000

7. Were other employees discharged at the same time for the same reason? If yes, provide name(s).
8. When were you made aware of the policy?
9. Did you receive a copy of the company policy?
10. Provide any additional facts regarding this separation.

**UNEMPLOYED WORKER:** You are required to respond to this form within 10 days from the Mail Date on the front of this form.

Most recent occupation: \_\_\_\_\_ Full-Time ☐ Part-Time ☐ Work schedule

Your first day worked: \_\_\_\_\_ Last day worked: \_\_\_\_\_ Most recent wage: \_\_\_\_\_  
hourly ☐ weekly ☐

Your name (please print): \_\_\_\_\_ Phone: \_\_\_\_\_

Your signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FOR EMPLOYERS:** You are required to respond to this form within 10 days of the Mail Date on the front of this form whether you feel payment(s) on this claim should be allowed or denied. If you fail to respond timely, you will not receive credit for benefits paid prior to receipt of the information, even if the unemployed worker is later found ineligible or disqualified. Please provide the following additional information.

First day worked: \_\_\_\_\_ Last day worked: \_\_\_\_\_ Date removed from payroll: \_\_\_\_\_

Your Name and Title (please print): \_\_\_\_\_

Your Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Phone: \_\_\_\_\_

**FOR EMPLOYERS:** You are required to respond to this form within 10 days of the Mail Date on the front of this form whether you feel payment(s) on this claim should be allowed or denied. If you fail to respond timely, you will not receive credit for benefits paid prior to receipt of the information, even if the unemployed worker is later found ineligible or disqualified. Please provide the following additional information.

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# EXHIBIT 3

## Notice of Redetermination

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Jan/29/2018 2:17:11 PM

UIA 1302  
(Rev. 03-14)  
Rick Snyder  
GOVERNOR



HCFA 248-247-3310  
State of Michigan  
Talent Investment Agency  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/uia



20/40  
Authorized By  
MCL 421.1 et seq.  
Sharon Moffett-Massey  
DIRECTOR

FRANK LUCENTE  
17371 KINGSBROOKE CIR APT 102  
CLINTON TOWNSHIP MI 48038-3758

Mail Date: November 23, 2015  
Letter ID: L0024780738  
MIN: 0337484032  
Name: FRANK LUCENTE

### Notice of Redetermination

SSN: ~~###~~ 4637  
Claimant: FRANK LUCENTE  
Original Mail Date: January 01, 2010

BYB: July 06, 2008  
Employer Number: 1562348 000  
Employer Name: DART PROPERTIES II LLC

Section(s) of Michigan Employment Security Act involved: 48.

YOU WORKED FULL-TIME FOR DART PROPERTIES II LLC BEGINNING 2/16/10. AS SUCH,  
YOU ARE INELIGIBLE FOR BENEFITS UNDER SECTION 48 OF THE MES ACT. YOU WERE  
PAID, SO RESTITUTION IS REQUIRED, AS SHOWN, UNDER SECTION 62 OF THE ACT.

You are ineligible for benefits under 48 of the Michigan Employment Security Act.

If you disagree with this (re)determination, refer to "Protest Rights and Appeal Rights" on the reverse side of this form.



TIA is an Equal Opportunity Employer/Program.

012916F0210811940052102



UIA 1302  
(Rev. 03-14)

Letter ID: L0024780738

### Protest Rights and Appeal Rights

Any protest or appeal must be filed by mail, fax or web account and received within 30 calendar days from the date this notice was issued on the front side of form. If the 30th day is a Saturday, Sunday, legal holiday, or Agency non-work day, the protest or appeal must be received by the Unemployment Insurance Agency (UIA) by the end of the next day which is neither a Saturday, Sunday, legal holiday, nor Agency non-work day. If a protest or appeal is not received within 30 days, a decision will become final and restitution may be due and owing.

**If you disagree with a determination and want to protest:**

- You may mail, fax or submit an online response to the following: UIA, PO Box 169, Grand Rapids MI 49501-0169, fax to: (517) 636-0427, or through your web account at [www.michigan.gov/uia](http://www.michigan.gov/uia).
- Protests must be signed or verified unless submitted through your online claim web account. However, the Agency may accept a protest that lacks a signature if the protest can be verified. The Agency will notify you.
- Attach copies of any documents, employer notices, correspondence, or other types of information that may clarify the issue you are protesting. Please retain the original documents for your files, as these documents will not be returned.
- All correspondence must have the claimant's name and Social Security Number, and the name of the employer (if applicable).
- If the 30-day protest period has already lapsed, your statement must indicate why your protest was not submitted on time.

**If you disagree with a redetermination and want to appeal, request a hearing before an Administrative Law Judge:**

- You may mail, fax, or submit an online response to the following: UIA, PO Box 124, Grand Rapids, MI 49501-0124, fax to: 1-616-366-0739, or through your web account at [www.michigan.gov/uia](http://www.michigan.gov/uia).
- All written appeals must be signed or verified. However, the Agency may accept an appeal that lacks a signature if the appeal can be verified. The Agency will notify you.

**IMPORTANT ADVOCACY INFORMATION:** After you appeal your redetermination to the Administrative Law Judge, an Advocate may be able to assist you at the hearing. This service is free to claimants and employers. If you are interested in using an Advocate, once you have received your Notice of Hearing, call the Advocacy Program at 1-800-638-3994 and press Option 2. Provide the Advocate Representative with the Appeal Number from your Notice of Hearing form. Some restrictions in service may apply.

**TO THE CLAIMANT:** If you protest or appeal, protect your rights by continuing to certify for benefits. Report using MARVIN, either by telephone or via the Internet at [www.michigan.gov/uia](http://www.michigan.gov/uia), and click on either heading, "UIA Online Services for Claimants", or "Certify With MARVIN Online" pending the redetermination or decision on your protest/appeal. If you go back to work, report this fact when you certify.

In accordance with the provisions of the 48, benefits (re)determined payable in accordance with this (re)determination will be paid, even though a protest may be filed at a later date. However, if a later redetermination or decision holds that you were not entitled to receive all or part of these benefits, you will be required to repay the benefits improperly received.

If you have any questions, call the UIA at 1-866-500-0017 (TTY callers use 1-866-366-0004).

**METHOD OF SATISFYING 13-WEEK AND 26-WEEK REQUALIFICATION:** Disqualifications imposed for a 13-week or 26-week requalification period will be terminated when you complete the required period. You will be credited with a week of requalification for each week in which you:

1. Certify as directed and meet the same requirements that apply to claiming a benefit payment, or
2. Earn at least 1/13th of the minimum high quarter earnings required to establish a benefit year, rounded down to a full dollar amount. For a benefit year beginning 1/4/2009 and after, the amount is \$220.00.

To re-qualify by certifying, you must report using MARVIN, either by telephone OR via the Internet at [www.michigan.gov/uia](http://www.michigan.gov/uia), and click on either heading "UIA Online Services for Claimants" or "Certify With MARVIN Online."

UIA is an Equal Opportunity Employer/Program.

RECEIVED by MSC 9/9/2020 8:16:51 PM

012916F02208021640052103



UIA 1302  
(Rev. 03-14)

Letter ID: L0024780738

**METHOD OF SATISFYING A REWORK REQUIREMENT:** A disqualification imposed for a voluntary quit can be terminated after you have worked and earned an amount equal to, or greater than, 12 times your weekly benefit amount. A disqualification imposed for a suspension or discharge for misconduct can be terminated after you have worked and earned an amount equal to, or greater than, 17 times your weekly benefit amount. The earnings must be with an employer liable under the 48 or the unemployment compensation law of another state.

**ELIGIBILITY FOR BENEFITS AFTER COMPLETION OF REQUALIFICATION OR REWORK:** After the requalification or rework requirements are completed, the claimant may be eligible for benefits. If wages earned with the employer involved in the (re)determination fall within the base period of the claim, benefits may be paid to the claimant on the basis of such wages. However, if the requalification requirements are imposed due to a separation under Section 29(1)(h), (i), (j), (k), or (m) of the MES Act, the claimant is not entitled to benefits based on wages earned with the involved employer before the week of disqualification.

**INTEREST:** Interest accrues at the rate of 1% per month (computed on a daily basis), Section 15(a) of the MES Act.

**PENALTIES:** If it is determined that you intentionally made a false statement, misrepresented the facts or concealed material information to obtain benefits, then the penalty provisions of Sections 54 and 62(b) of the Michigan Employment Security Act will be applied and you will be subject to any or all of the following: You would have to repay money received and pay a penalty of two times (if less than \$500 of improper payments) or four times (if \$500 or more of improper payments) the amount of benefits fraudulently received. The two times penalty would be increased to a penalty of 4 times the amount of improper payments if it were a second or subsequent offense. Your benefits will be stopped and you will lose remaining benefits. You will be required to pay court costs (if prosecuted) and fines, face jail time, or you may be required to perform community service, or all of these. Intentional misrepresentation to obtain benefits in excess of \$3,500 is a felony and you may be prosecuted in criminal court.

This is a summary of a previously-mailed (re)determination for which there were protest/appeal rights and is being provided for informational purposes only.

This document is not subject to protest/appeal.

#### AGENCY STATEMENT OF REPRODUCTION OF CONTENT OF ORIGINAL (RE)DETERMINATIONS AND RECONSIDERATIONS

Effective October 1, 2013, the Unemployment Insurance Agency (Agency) converted from its old main frame system, known as 3270, to a new computer based system known as MiDAS (Michigan Integrated Data Automated System).

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TIA is an Equal Opportunity Employer/Program.

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This claimant also has the following mail serve dates:

Mail Serve Dates

30-Nov-2010

01-Dec-2010

012916F022P891640052105



012916F022198043640052106

**EXHIBIT 4**  
**Notice of Redetermination**

RECEIVED by MSC 9/9/2020 8:16:51 PM

Jan/29/2016 2:17:11 PM

HCFA 248-247-3310

25/40

UIA 1302  
(Rev. 03-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Talent Investment Agency  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/uia



Authorized By  
MCL 421.1 et seq.  
Sharon Moffatt-Massey  
DIRECTOR

FRANK LUCENTE  
17371 KINGSBROOKE CIR APT 102  
CLINTON TOWNSHIP MI 48038-3758

Mail Date: November 23, 2015  
Letter ID: L0024991508  
MIN: 0337484032  
Name: FRANK LUCENTE

### Notice of Redetermination

SSN: ###-##-4637      BYB: July 27, 2008  
Claimant: FRANK LUCENTE      Employer Number: 1562346 000  
Original Mail Date: January 01, 2010      Employer Name: DART PROPERTIES II LLC

Section(s) of Michigan Employment Security Act involved: 54B, 62B.

YOUR ACTIONS ARE CONSIDERED TO HAVE BEEN INTENTIONAL BECAUSE:  
YOU FAILED TO NOTIFY THIS AGENCY THAT YOU WERE WORKING FULL-TIME AND  
CONTINUED TO COLLECT BENEFITS FOR FOUR MORE MONTHS. YOU INTENTIONALLY  
WITHHELD INFORMATION TO OBTAIN BENEFITS. YOU ARE DISQUALIFIED UNDER  
SECTIONS 62(B) AND 54(B) OF THE MES ACT.

You are Disqualified for benefits under 54B, 62B of the Michigan Employment Security Act.

If you disagree with this (re)determination, refer to "Protest Rights and Appeal Rights" on the reverse side of this form.



TIA is an Equal Opportunity Employer/Program.

RECEIVED by MSC 9/9/2020 8:16:51 PM

012916F02108021640052107



UIA 1302  
(Rev. 03-14)

Letter ID: L0024991508

## Protest Rights and Appeal Rights

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- Attach copies of any documents, employer notices, correspondence, or other types of information that may clarify the issue you are protesting. Please retain the original documents for your files, as these documents will not be returned.
- All correspondence must have the claimant's name and Social Security Number, and the name of the employer (if applicable).
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- You may mail, fax, or submit an online response to the following: UIA, PO Box 124, Grand Rapids, MI 49501-0124, fax to: 1-616-356-0739, or through your web account at [www.michigan.gov/uia](http://www.michigan.gov/uia).
- All written appeals must be signed or verified. However, the Agency may accept an appeal that lacks a signature if the appeal can be verified. The Agency will notify you.

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**TO THE CLAIMANT:** If you protest or appeal, protect your rights by continuing to certify for benefits. Report using MARVIN, either by telephone or via the Internet at [www.michigan.gov/uia](http://www.michigan.gov/uia), and click on either heading, "UIA Online Services for Claimants", or "Certify With MARVIN Online" pending the redetermination or decision on your protest/appeal. If you go back to work, report this fact when you certify.

In accordance with the provisions of the 54B, 62B, benefits (re)determined payable in accordance with this (re)determination will be paid, even though a protest may be filed at a later date. However, if a later redetermination or decision holds that you were not entitled to receive all or part of these benefits, you will be required to repay the benefits improperly received.

If you have any questions, call the UIA at 1-866-500-0017 (TTY callers use 1-866-366-0004).

**METHOD OF SATISFYING 13-WEEK AND 26-WEEK REQUALIFICATION:** Disqualifications imposed for a 13-week or 26-week requalification period will be terminated when you complete the required period. You will be credited with a week of requalification for each week in which you:

1. Certify as directed and meet the same requirements that apply to claiming a benefit payment, or
2. Earn at least 1/13th of the minimum high quarter earnings required to establish a benefit year, rounded down to a full dollar amount. For a benefit year beginning 1/4/2009 and after, the amount is \$220.00.

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TIA is an Equal Opportunity Employer/Program.



UIA 1302  
(Rev. 03-14)

Letter ID: L0024991508

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**ELIGIBILITY FOR BENEFITS AFTER COMPLETION OF REQUALIFICATION OR REWORK:** After the requalification or rework requirements are completed, the claimant may be eligible for benefits. If wages earned with the employer involved in the (re)determination fall within the base period of the claim, benefits may be paid to the claimant on the basis of such wages. However, if the requalification requirements are imposed due to a separation under Section 29(1)(h),(i),(j),(k), or (m) of the MES Act, the claimant is not entitled to benefits based on wages earned with the involved employer before the week of disqualification.

**INTEREST:** Interest accrues at the rate of 1% per month (computed on a daily basis), Section 15(a) of the MES Act.

**PENALTIES:** If it is determined that you intentionally made a false statement, misrepresented the facts or concealed material information to obtain benefits, then the penalty provisions of Sections 54 and 62(b) of the Michigan Employment Security Act will be applied and you will be subject to any or all of the following: You would have to repay money received and pay a penalty of two times (if less than \$500 of improper payments) or four times (if \$500 or more of improper payments) the amount of benefits fraudulently received. The two times penalty would be increased to a penalty of 4 times the amount of improper payments if it were a second or subsequent offense. Your benefits will be stopped and you will lose remaining benefits. You will be required to pay court costs (if prosecuted) and fines, face jail time, or you may be required to perform community service, or all of these. Intentional misrepresentation to obtain benefits in excess of \$3,500 is a felony and you may be prosecuted in criminal court.

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TIA is an Equal Opportunity Employer/Program.

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RECEIVED by MSC 9/9/2020 8:16:51 PM

**EXHIBIT 5**  
**Non-Protestable Summary of (Re) Determined  
Restitution**

Jan/29/2018 2:17:11 PM

HCFA 248-247-3310

29/40

UIA 1301  
(Rev. 04-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Talent Investment Agency  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/tia



Authorized By  
MCL 421.1 et seq.  
Sharon Moffatt-Massey  
DIRECTOR

012916F0218014600052111

FRANK LUCENTE  
17371 KINGSBROOKE CIR APT 102  
CLINTON TOWNSHIP MI 48038-3758

Mail Date: November 23, 2015

Letter ID: L0024868627

MIN: 0337434032

Name: FRANK LUCENTE

**Non-Protestable Summary of Previously (Re) Determined Restitution**  
(List of Overpayments)

SSN: ~~###-##-4637~~ BYB: July 27, 2008  
Claimant: FRANK LUCENTE Employer Number: 1562346 000  
Original Mail Date: December 01, 2010 Employer Name: DART PROPERTIES II LLC

Should your disqualification or ineligibility be reversed, restitution shall cease if you are not otherwise disqualified or ineligible for unemployment benefits.

Week Ending	Principal	Program	Total
20-Feb-2010	\$362.00	EUC3	\$362.00
20-Feb-2010	\$25.00	FAC	\$25.00
27-Feb-2010	\$362.00	EUC3	\$362.00
27-Feb-2010	\$25.00	FAC	\$25.00
06-Mar-2010	\$362.00	EUC3	\$362.00
06-Mar-2010	\$25.00	FAC	\$25.00
13-Mar-2010	\$362.00	EUC3	\$362.00
13-Mar-2010	\$25.00	FAC	\$25.00
20-Mar-2010	\$362.00	EUC3	\$362.00
20-Mar-2010	\$25.00	FAC	\$25.00
27-Mar-2010	\$362.00	EUC3	\$362.00
27-Mar-2010	\$25.00	FAC	\$25.00
03-Apr-2010	\$362.00	EUC3	\$362.00
03-Apr-2010	\$25.00	FAC	\$25.00
10-Apr-2010	\$362.00	EUC3	\$362.00
10-Apr-2010	\$25.00	FAC	\$25.00
17-Apr-2010	\$362.00	EUC3	\$362.00
17-Apr-2010	\$25.00	FAC	\$25.00
24-Apr-2010	\$362.00	EUC3	\$362.00
24-Apr-2010	\$25.00	FAC	\$25.00



TIA is an Equal Opportunity Employer/Program.

RECEIVED by MSC 9/9/2020 8:16:51 PM



UIA 1301  
(Rev. 04-14)

Letter ID: L0024868627

Week Ending	Principal	Program	Total
01-May-2010	\$362.00	EUC3	\$362.00
01-May-2010	\$25.00	FAC	\$25.00
08-May-2010	\$362.00	EUC3	\$362.00
08-May-2010	\$25.00	FAC	\$25.00
15-May-2010	\$25.00	FAC	\$25.00
22-May-2010	\$25.00	FAC	\$25.00
29-May-2010	\$25.00	FAC	\$25.00
05-Jun-2010	\$25.00	FAC	\$25.00
12-Jun-2010	\$25.00	FAC	\$25.00
19-Jun-2010	\$25.00	FAC	\$25.00
	<u>\$4,794.00</u>		<u>\$4,794.00</u>
Penalty	\$18,276.00		<u>\$18,276.00</u>
			<u>\$23,070.00</u>

Claimant must pay to the Agency in cash, by check, money order, EFT via MiWAM or deduction from benefits, restitution as noted above under MES Act, Section 62(a).

Reason for overpayment does not come within the criteria for waiver. If you are unable to repay the balance owed due to indigency, you may request, or reapply for, a waiver due to your financial status at any time via fax at (517) 636-0427, mail at UIA, PO Box 169, Grand Rapids MI 49501-0169, or your MiWAM account.

Repayment arrangements should be made with the Benefit Overpayment Collection (BOC) Unit. For information on repayment or repayment arrangements, contact BOC at 1-800-638-6372 from 9:00 a.m. to 3:00 p.m. Eastern Time Monday through Friday. Checks or money orders must be made payable to the "State of Michigan for UIA." Submit the check or money order with the payment voucher that will be attached to the monthly statement. The address is: State of Michigan, Unemployment Insurance Agency - Restitution, Dept #771760, PO Box 77000 Detroit, MI 48277-1760. DO NOT SEND CASH. You may also make restitution payments through your MiWAM account by setting up electronic funds transfer (EFT) payments.



TIA is an Equal Opportunity Employer/Program.

RECEIVED by MSC 9/9/2020 8:16:51 PM

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UIA 1301  
(Rev. 04-14)

Letter ID: L002488827

This is a summary of a previously-mailed (re)determination for which there were protest/appeal rights and is being provided for informational purposes only.

This document is not subject to protest/appeal.

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TIA is an Equal Opportunity Employer/Program.

RECEIVED by MSC 9/9/2020 8:16:51 PM

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012916F02188031540052114

# EXHIBIT 6

## Wage Garnishment Request

UIA 1141  
(Rev. 01-14)  
Rick Snyder  
GOVERNOR



State of Michigan  
Department of Licensing and Regulatory Affairs  
Unemployment Insurance Agency  
3024 W Grand Blvd, Detroit, MI 48202  
www.michigan.gov/UIA



Authorized By  
MCL 421.1 et seq.  
Shaun Thomas  
DIRECTOR

15326

Equity Workforce Solutions  
APR 17 2014  
VENURE HR INC  
4140 E BASELINE RD STE 201  
MESA AZ 85208-4414

Mail Date: April 3, 2014  
Letter ID: L0009649905  
FEIN: 200456784  
Name: VENURE HR INC

### Wage Garnishment Request

FRANK LUCENTE [REDACTED] has overpayment debt with the State of Michigan, Unemployment Insurance Agency (UIA). We have been informed that they are currently working for you. Please answer the questions below regarding their employment status with you. This completed form must be received by UIA within 10 calendar days of the mail date shown.

#### CURRENT EMPLOYMENT STATUS:

- \* Is the debtor named above currently employed by you? ☒ Yes ☐ No
- \* Please indicate the debtor's pay cycle: ☒ Weekly ☐ Bi-Weekly ☐ Monthly ☐ Other
- \* If the debtor is not currently employed by you, did or were they:
  - ☐ Laid Off ☐ Terminated ☐ Quit ☐ Never Employed by you?
- \* If the debtor was laid off, on what date is the debtor expected to return to work? \_\_\_\_\_
- \* If the debtor was terminated or quit, on what date did the separation occur? \_\_\_\_\_
- \* If terminated or quit, is the debtor currently employed elsewhere? ☐ Yes ☐ No ☐ Unknown
- \* If employed elsewhere, provide the name and address of the current employer, if known \_\_\_\_\_

Please return this form to the address shown below. If the debtor is not currently employed by you, do not complete the back of this form.

Benefit Enforcement Unit  
PO Box 189  
Grand Rapids MI 49501-0189  
Phone number: (313) 456-1360 from 9:00 a.m. to 3:00 p.m. Monday through Friday  
Fax: 517-638-0427  
BEU@Michigan.Gov

#### WAGE GARNISHMENT ORDER

THIS ORDER OF WAGE GARNISHMENT ISSUED BY THE STATE OF MICHIGAN, UNEMPLOYMENT INSURANCE AGENCY, UNDER THE AUTHORITY OF THE MICHIGAN COMPILED LAWS (MCL), SECTIONS 421.15(m)(3) AND 421.16(n) REQUIRES THE EMPLOYER OF THE NAMED DEBTOR TO DO THE FOLLOWING: This debtor is subject to Wage Garnishment Request which means that you will be required to complete a worksheet and submit payment of up to 25% to the State of Michigan Unemployment Insurance Agency (UIA) each pay period. You will receive a monthly voucher and worksheet to remit payment. You will complete the worksheet for each pay period to the UIA that represents the total of all the payment withheld from the debtor's paycheck(s). Each month's payment must be submitted to the UIA as long as you employ the debtor, or until you are notified by the UIA to suspend or discontinue deductions because the debt has been satisfied. During this process, if the claimant becomes unemployed from your company, please notify the UIA of this change in employment status either in writing or by phone. You may contact the Benefit Enforcement Unit at (313) 456-1360.

LARA is an Equal Opportunity Employer/Program.

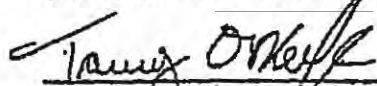
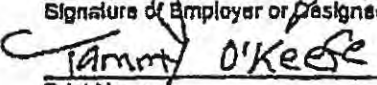


UIA 1141  
(Rev. 01-14)

Letter ID: L0009649903

## CERTIFICATION

I certify that I am the Employer, or authorized by the Employer, to complete this Wage Garnishment process and that I have answered completely and correctly to the best of my knowledge and belief. I understand that MCL 421.54(a) provides penalties for intentional failure to comply with the Wage Garnishment process provided under MCL 421.15 (n) of up to three times the amount involved, and/or community service, and/or imprisonment.

  
Signature of Employer or Designee  
Print NameVerisure HR Inc  
Business Name4-23-14  
Date480-443-2650  
Telephone

LARA is an Equal Opportunity Employer/Program.

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EXHIBIT 7  
Notice (s) of Payment Due

RECEIVED by MSC 9/9/2020 8:16:51 PM



UIA 1088  
(Rsv. 01/12)State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/uita](http://www.michigan.gov/uita)Authorized by  
MCL 421.1 et seq.FRANK, LUCENTE  
23630 DENTON ST 129  
CLINTON TOWNSHIP, MI. 48035-Statement Date:  
SSN:

02/24/2012

637

**NOTICE OF PAYMENT DUE**

Current Overpayment Balance:	\$6,966.00
Interest Balance as of 02/24/2012:	\$0.00
Current Penalty Balance:	\$26,964.00
Minimum Monthly Payment Due:	\$125.00

You received a determination from the Unemployment Insurance Agency (UIA) that you were overpaid unemployment benefits. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the current overpayment, interest, and penalty balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

Your Michigan State Income Tax Refund, as provided by MCL § 421.62(a), will be intercepted by the UIA and used as payment toward the amount you owe if payment in full is not made on your account. Your Federal Income Tax Refund, as provided by 26 U.S.C. 6402(f), will be intercepted by the UIA for overpayment of unemployment benefits due to intentional misrepresentation or unreported earnings if payment in full is not made on your account. The current overpayment, current interest, and current penalty balances must be paid in full to avoid having the UIA intercept your tax refund(s). Paying the minimum monthly payment will not stop your income tax refund(s) from being intercepted by the UIA. In addition, if you are currently receiving unemployment benefits and overpayment deductions are being withheld from your payments by the UIA, your income tax refund(s) will still be intercepted by the UIA to pay off your balance(s).

Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:



BENEFIT OVERPAYMENT COLLECTION UNIT

P.O. BOX 9045

DETROIT, MI 48202-9045

Telephone: 1-800-638-6372 (TTY customers use 1-866-366-0004)  
from 9:00 AM to 3:30 PM Eastern TimeUNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNIT  
PAYMENT COUPON

SSN: 637

Name: FRANK, LUCENTE

Statement Date: 02/24/2012

Records Office: 023

If your address has changed, check here ☐ and provide new address:

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Zip/Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

LARA IS AN EQUAL OPPORTUNITY EMPLOYER/PROGRAM

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UJA 1088  
(Rev. 01/12)State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/ujia](http://www.michigan.gov/ujia)Authorized by  
MCL 421.1 et seq.FRANK . LUCENTE  
23630 DENTON ST 129  
CLINTON TOWNSHIP, MI. 48035-Statement Date :  
SSN :03/27/2012  
4637**NOTICE OF PAYMENT DUE**

Current Overpayment Balance:	\$6,966.00
Interest Balance as of 03/27/2012:	\$0.00
Current Penalty Balance:	\$26,964.00
Minimum Monthly Payment Due:	\$250.00

You received a determination from the Unemployment Insurance Agency (UIA) that you were overpaid unemployment benefits. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the current overpayment, interest, and penalty balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

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Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:

BENEFIT OVERPAYMENT COLLECTION UNIT  
P.O. BOX 9045  
DETROIT, MI 48202-9045Telephone: 1-800-638-6372 (TTY customers use 1-866-366-0004)  
from 9:00 AM to 3:30 PM Eastern TimeUNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNIT  
PAYMENT COUPONSSN: ~~4637~~  
Name: FRANK . LUCENTE  
Statement Date: 03/27/2012  
Records Office: 023

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

If your address has changed, check here ☐ and provide new address:Address: \_\_\_\_\_  
City/State: \_\_\_\_\_  
Zip/Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_

LARA IS AN EQUAL OPPORTUNITY EMPLOYER PROGRAM

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**EXHIBIT 8**

**Second Notice of Payment Due**

**Final Notice of Payment Due**

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UIA 1025  
(Rev. 01/12)State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/ua](http://www.michigan.gov/ua)Authorized by  
MCL 421.1 et seq.FRANK . LUCENTE  
PO BOX 3083  
CENTER LINE, MI. 48015-0083Statement Date :  
SSN :04/24/2012  
4637**SECOND NOTICE OF PAYMENT DUE**

Current Overpayment Balance:	\$6,966.00
Interest Balance as of 04/24/2012:	\$0.00
Current Penalty Balance:	\$25,964.00
Minimum Monthly Payment Due:	\$250.00

You failed to pay the minimum monthly payment due last month. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the above balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

Your Michigan State Income Tax Refund, as provided by MCL § 421.62(a), will be intercepted by the UIA and used as payment toward the amount you owe if payment in full is not made on your account. Your Federal Income Tax Refund, as provided by 26 U.S.C. 6402(f), will be intercepted by the UIA for overpayment of unemployment benefits due to intentional misrepresentation or unreported earnings if payment in full is not made on your account. The current overpayment, interest, and penalty balances must be paid in full to avoid having the UIA intercept your tax refund(s). Paying the minimum monthly payment will not stop your income tax refund(s) from being intercepted by the UIA. In addition, if you are currently receiving unemployment benefits and overpayment deductions are being withheld from your payments by the UIA, your income tax refund(s) will still be intercepted by the UIA to pay off your balance(s).

Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:

BENEFIT OVERPAYMENT COLLECTION UNIT  
P.O. BOX 9045

DETROIT, MI 48202-9045

Telephone: 1-800-538-6372 (TTY customers use 1-866-366-0004)  
from 9:00 AM to 3:30 PM Eastern TimeUNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNIT  
PAYMENT COUPON

SSN: 4637

Name: FRANK . LUCENTE

Statement Date: 04/24/2012

Records Office: 023

If your address has changed, check here ☐ and provide new address:

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Zip/Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

LARA IS AN EQUAL OPPORTUNITY EMPLOYER PROGRAM



UIA 1083  
(Rev. 04/12)State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/ua](http://www.michigan.gov/ua)Authorized by  
MCL 421.1 et seq.FRANK LUCENTE  
PO BOX 3083  
CENTER LINE, MI 48015-0083Statement Date :  
SSN :05/24/2012  
4637**FINAL NOTICE OF PAYMENT DUE**

Current Overpayment Balance:	\$6,966.00
Interest Balance as of 05/24/2012:	\$0.00
Current Penalty Balance:	\$25,964.00
Minimum Monthly Payment Due:	\$375.00

You failed to pay the minimum monthly payment due last month. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the above balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

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Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:

BENEFIT OVERPAYMENT COLLECTION UNIT  
P.O. BOX 9045  
DETROIT, MI 48202-9045Telephone: 1-800-638-6372 (TTY customers use 1-866-368-0004)  
from 9:00 AM to 3:30 PM Eastern TimeUNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNITPrefer to pay on line?  
At [www.michigan.gov/ua](http://www.michigan.gov/ua), click on Online Services**PAYMENT COUPON**

SSN: 4637

Name: FRANK LUCENTE

Statement Date: 05/24/2012

Records Office: 023

If your address has changed, check here ☐ and provide new address:

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

LARA IS AN EQUAL OPPORTUNITY EMPLOYER/PROGRAM

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7

## GWINN TAURLAINEN PLLC

Attorneys and Counselors at Law  
901 Wilshire Drive, Suite 550  
Troy, MI 48064  
(248) 247-3300  
(248) 247-3310 facsimile

Daniel A. Gwinn  
daniel@gwinntlegal.com

Kari L. Taurinen  
kari@gwinntlegal.com

## FACSIMILE TRANSMITTAL

To: State of Michigan - VIA Fax No: (517) 636-0427

From: Daniel A. Gwinn Date: 11-17-15

Number of Pages: 1 Plus Cover

Message: Frank Lucente.

Claimant MIN 0337484032

\*\*\*\*\*  
THIS MATERIAL IS INTENDED FOR THE INDIVIDUAL OR ENTITY TO WHICH IT IS  
ADDRESSED. IT MAY CONTAIN PRIVILEGED, CONFIDENTIAL INFORMATION  
WHICH IS EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAWS. IF YOU ARE  
NOT THE INTENDED RECIPIENT, PLEASE NOTE THAT YOU ARE STRICTLY  
PROHIBITED FROM DISSEMINATING OR DISTRIBUTING THIS MATERIAL (OTHER  
THAN TO THE INTENDED RECIPIENT) OR COPYING THIS MATERIAL.

IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US  
IMMEDIATELY BY TELEPHONE AND RETURN THIS MATERIAL (AND ALL COPIES  
TO US BY MAIL AT THE ABOVE ADDRESS. ON REQUEST, WE WILL REIMBURSE  
YOU FOR ANY COST OF RETURN.

THANK YOU.

Received

NOV 17 2015

UIA/WDC



**GWINN TAURIAINEN PLLC**

Attorneys and Counselors at Law  
901 Wilshire Drive, Suite 550  
Troy, MI 48064  
(248) 247-3310  
(248) 247-3310 facsimile  
[www.gwinntauriainenlaw.com](http://www.gwinntauriainenlaw.com)

Daniel A. Gwinn  
[daniel@gwinntauriainenlaw.com](mailto:daniel@gwinntauriainenlaw.com)

Karl L. Tauriainen  
[karl@gwinntauriainenlaw.com](mailto:karl@gwinntauriainenlaw.com)

November 17, 2015

VIA FACSIMILE (517) 636-0427 and first class mail

State of Michigan  
LARA - UIA  
3024 W. Grand Boulevard  
Detroit, MI 48202

Benefits Overpayment Collection Unit  
UIA  
P O Box 169  
Grand Rapids, MI 49501-0169

RE: Frank Lucente, Claimant  
SS [REDACTED]  
Claimant MIN: 0337484032

This office represents Frank Lucente. We are requesting a copy of the entire file relating to Mr. Lucente, SS# 374-82-4637. Please forward a copy of the entire file to me upon receipt of this letter.

Please contact me if you have any questions. Thank you.

Very truly yours,

GWINN TAURIAINEN PLLC



Daniel A. Gwinn

cc: Frank Lucente

Received

NOV 17 2015

UIA/WDC



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF TALENT AND ECONOMIC DEVELOPMENT  
LANSING

STEVE ARWOOD  
DIRECTOR

Ronald Stern  
15495 Lindsay St  
Detroit MI 48227-1521

Mail Date: 06/06/16  
Claim ID: C3663130-0

NOTICE OF FRAUD INVESTIGATION/ IDENTITY THEFT

Dear Ronald Stern,

It has come to the attention of the Unemployment Insurance Agency (UIA) that the unemployment claim number shown above may have been established as the result of identity theft and is currently under investigation.

You must contact the Fraud Investigation Unit Hotline at (855) 842-7463 in order to resolve this matter. In addition, you are required to report, in person, within 10 days of the date of this Notice to the nearest Problem Resolution Office (PRO) to establish your identity. You may report to any of the locations listed on the reverse side of this Notice.

When reporting to the PRO, bring this notice with you and present it to the UIA staff person. You are also required to provide a government issued Photo ID, and any one of the forms of identification listed below:

- Official Social Security Card
- Official U.S. Citizenship & Immigration Services (USCIS) documents of Citizenship, Certificate of Naturalization, and Work Authorization Documentation. If you are an immigrant or non-citizen this documentation is required
- Official Name Change documentation (required in the event you changed your name)
- Official Marriage License (if applicable)

If reporting in person to the PRO presents a hardship, please contact the Fraud Investigation Unit Hotline at (855) 842-7463 (TTY customers use 1-866-366-0004) to make other arrangements. Failure to contact the UIA will result in a determination made based on available information.

TED is an equal opportunity employer/program.  
Auxiliary aids, services and other reasonable accommodations are available upon request to individuals with disabilities.  
CADILLAC PLACE • 3024 W. GRAND BLVD. • DETROIT, MICHIGAN 48202 • [www.michigan.gov/tia](http://www.michigan.gov/tia) • (517) 335-5858

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2

Customer									
FRANK LUCENTE-4637									
Menu					New Manager				
CUSTOMER: CLAIMANT					Update P&E Export Collapse				
BENEFIT OVERPAYMENT									
Balance	: 25,662.56	Customer	FRANK LUCENTE						
SSN	: 374-62-4637	17371 KINGSBROOKE CIR APT 102 CLINTON TOWNSHIP MI 48038-3758							
Date of Birth	: 10-Aug-1972								
RECENT NOTES					OPEN TASKS				
HEARING PREP APPEAL DOCKET #16-014504					gillc2 03-Jun-2016 12:25:08				
HEARING PREP APPEAL DOCKET #16-014572					Nonmonetary Issue				
F.O.I.A. Labor: Review and separate exempt from non-exempt materials - redacted time = 45 minutes.					Nonmonetary Issue				
					Benefits Delinquent				
CLAIMS SUMMARY CRM TASK COLLECTION FINANCIAL ADJUSTMENT WEB									
CLAIMS CLAIMANT IDS NAMES ADDRESSES CONTACTS LEGACY BILLING LINKS BANK ACCOUNTS ADJUSTMENTS REPAYMENT CLAIMS									
U CLAIMS Add Claim P&E Old Fraud Hide History Filter									
Claim Id	Claim	Type	Status	BYB	BYE	Effective Date	WBA	Duration of Benefits	Balance
C3366085-0	UI Claim	New	Allowed	27-Jul-2008	25-Jul-2009		362.00	26.00	0.00
C3366085-1	Extensions	EB	Allowed			13-Sep-2009	362.00	20.00	0.00
C3366085-2	Extensions	EUC1	Allowed			25-Jan-2009	362.00	20.00	0.00
C3366085-3	Extensions	EUC2	Allowed			14-Jun-2009	362.00	14.00	0.00
C3366085-4	Extensions	EUC3	Allowed			08-Nov-2009	362.00	13.00	18,276.00
C3366085-5	Extensions	EUC4	Allowed			08-May-2010	362.00	5.00	7,386.56
C3366085-0	UI Claim	New	Denied	28-Jul-2009	24-Jul-2010		0.00	0.00	0.00
7 Rows									25,662.56

3

Address

ctrl2 28-Sep-2013

## ADDRESS

Change Activate

APPLIES TO: CUSTOMER

Address Type Physical

SSN

FRANK LUCENTE

Override

Country USA

Street PO BOX 3083

Street

Unit Type

Unit #

City CENTER LINE

State MICHIGAN

Zip 48015-0083

County

Attention

## HISTORY

## NOTES

## HISTORY

Filter

From	To	Address	Location	Who	Active
09-Jun-2015		17371 KINGSBROOKE CIR APT 102 CLINTON TOWNSHIP MI 48036-3758		jahl	<input checked="" type="checkbox"/>
28-Sep-2013	09-Jun-2015	PO BOX 3083 CENTER LINE MI 48015-0083		jahl	<input type="checkbox"/>
28-Sep-2013		PO BOX 3083 CENTER LINE MI 48015-0083		cmr2	<input checked="" type="checkbox"/>
27-Sep-2013	28-Sep-2013	PO BOX 3083 CENTER LINE MI 48015-0083		cmr2	<input type="checkbox"/>
27-Sep-2013		PO BOX 3083 CENTER LINE MI 48015-0083		cmr2	<input checked="" type="checkbox"/>

5 Rows



(4)

Customer		FRANK LUCENTE 1637	
Menu		New Manager	
CUSTOMER: CLAIMANT		Update P81 Explore Collapse	
BENEFIT OVERPAYMENT			
Balance	: 25,652.58	Customer	[REDACTED]
SSN	: 374-82-4637	FRANK LUCENTE	
Date of Birth	: 10-Aug-1972	17371 KINGSBROOKE CIR APT 102 CLINTON TOWNSHIP MI 48038-3758	
RECENT NOTES		Add Hide Related View All	
HEARING PREP APPEAL DOCKET #16-014604		Nonmonetary Nonmonetary Issue	
HEARING PREP APPEAL DOCKET #16-014572		Nonmonetary Nonmonetary Issue	
F.O.I.A. Labor: Review and separate exempt from non-exempt materials - redacted time = 45 minutes.		Benefits Delinquent	
CLAIMS SUMMARY CRM TASK COLLECTION FINANCIAL ADJUSTMENT WEB			
WEB PROFILES WEB NOTICES REQUIRE ATTENTION STORED PROCESSED			
Application MWAM			
New Logons Allowed	: Yes		
Third Party Logons Allowed	: No		
Default Access Level	: ALL ACCESS		
Third Party Default Access Level	: No Access		
WEB LOGONS		Show History Filter	
Web Logon	Name	Third Party Employer	Access Type
		Opened	Closed
			Published

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**Customer**  
FRANK LUCENTE: 4517

Menu New Manager

CUSTOMER: CLAIMANT

Update P21 Export Collect

**BENEFIT OVERPAYMENT**

Balance : 25,662.58 Customer [REDACTED]

SSN : 374-82-4637 FRANK LUCENTE

Date of Birth : 10-Aug-1972 17371 KINGSBROOKE CIR APT 102 CLINTON TOWNSHIP MI 48038-3758

RECENT NOTES Add Hide Related View All

HEARING PREP APPEAL DOCKET #16-014804

HEARING PREP APPEAL DOCKET #16-014572

F.O.J.A. Labor: Review and separate exempt from non-exempt materials - redacted time = 45 minutes.

OPEN TASKS View All

Nonmonetary Nonmonetary Issue

Nonmonetary Nonmonetary Issue

Benefits Delinquent

CLAIMS SUMMARY CRM TASK COLLECTION FINANCIAL ADJUSTMENT WEB

NOTES INDICATORS LETTERS ATTACHMENTS CORRESPONDENCE LIST

LETTERS: ALL LETTERS Add Print Select None Show History Filter

Request	Letter	Letter Type	Ready	Print	Printed	Reprint	Reprint Date	Valid
27-May-2016 07:13:13	L0029870492	UIA 1301 - Legacy Over Detail	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>
27-May-2016 07:07:05	L0029722908	UIA 1301 - Legacy Over Detail	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>
20-May-2016 10:34:53	L0029694794	UIA 1302 - Legacy (re) Deferm	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>		<input checked="" type="checkbox"/>
27-Apr-2016 23:01	L0029329447	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	27-Apr-2016	<input type="checkbox"/>		<input checked="" type="checkbox"/>
27-Jan-2016 22:09:10	L0028582680	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	27-Jan-2016	<input type="checkbox"/>		<input checked="" type="checkbox"/>
15-Jan-2016 09:49:58	L0026867876	UIA 1077 - Denial of Reconsid	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15-Jan-2016	<input type="checkbox"/>		<input checked="" type="checkbox"/>
15-Jan-2016 09:49:28	L0026867873	UIA 1077 - Denial of Reconsid	<input checked="" type="checkbox"/>	<input type="checkbox"/>	15-Jan-2016	<input type="checkbox"/>		<input checked="" type="checkbox"/>
27-Oct-2015 21:34:31	L0024202475	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	27-Oct-2015	<input type="checkbox"/>		<input checked="" type="checkbox"/>
27-Jul-2015 21:35:47	L0022282765	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	27-Jul-2015	<input type="checkbox"/>		<input checked="" type="checkbox"/>
27-Apr-2015 22:02:24	L0019831166	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	28-Apr-2015	<input type="checkbox"/>		<input checked="" type="checkbox"/>
27-Jan-2015 22:22:35	L0016975706	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	28-Jan-2015	<input type="checkbox"/>		<input checked="" type="checkbox"/>
27-Oct-2014 21:42:32	L0014883033	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	27-Oct-2014	<input type="checkbox"/>		<input checked="" type="checkbox"/>
25-Sep-2014 21:05:01	L0013455990	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	25-Sep-2014	<input type="checkbox"/>		<input checked="" type="checkbox"/>
25-Aug-2014 21:08:01	L0013283067	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	25-Aug-2014	<input type="checkbox"/>		<input checked="" type="checkbox"/>
23-Jul-2014 21:02:05	L0012098943	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	23-Jul-2014	<input type="checkbox"/>		<input checked="" type="checkbox"/>
23-Jun-2014 21:17:08	L0011382561	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	23-Jun-2014	<input type="checkbox"/>		<input checked="" type="checkbox"/>
21-May-2014 21:41:27	L0010880538	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	21-May-2014	<input type="checkbox"/>		<input checked="" type="checkbox"/>
21-Apr-2014 21:48:30	L0010098854	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	21-Apr-2014	<input type="checkbox"/>		<input checked="" type="checkbox"/>
21-Mar-2014 20:22:52	L0009004789	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	21-Mar-2014	<input type="checkbox"/>		<input checked="" type="checkbox"/>
21-Feb-2014 20:28:14	L0008857823	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	21-Feb-2014	<input type="checkbox"/>		<input checked="" type="checkbox"/>
22-Jan-2014 00:00:44	L0007081564	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	22-Jan-2014	<input type="checkbox"/>		<input checked="" type="checkbox"/>
18-Dec-2013 22:18:49	L0006448234	UIA 1088 - Monthly Statement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	18-Dec-2013	<input type="checkbox"/>		<input checked="" type="checkbox"/>
04-Nov-2013 20:11:41	L0005204580	UIA 4095 - Special Gam Notic	<input checked="" type="checkbox"/>	<input type="checkbox"/>	05-Nov-2013	<input type="checkbox"/>		<input checked="" type="checkbox"/>
28-Oct-2013 22:28:55	L0004831844	UIA 1148 - Notice of Garnish	<input checked="" type="checkbox"/>	<input type="checkbox"/>	28-Oct-2013	<input type="checkbox"/>		<input checked="" type="checkbox"/>

24 Rows





STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Form 1850

«RECIP\_FULL\_NAME»

«RECIP\_ADD0»

«RECIP\_ADD1»

«RECIP\_ADD2»

«RECIP\_CITY», «RECIP\_SPCODE»

«RECIP\_POSTAL»

Docket No.: 16-014572

Case No.: 6281815

Employer: DART PROPERTIES II LLC

Claimant: FRANK LUCENTE

SSN: XXX-XX-4637

Administrative Law Judge: Michael Wakeley

ORDER

The Agency's January 19, 2016 Adjudication is reversed.

The claimant had good cause for his late appeal under Section 32a(2) of the Michigan Employment Security Act (Act), and his appeal to the Agency's November 30, 2010 Redetermination may be considered.

The Agency's November 30, 2010 Adjudication is affirmed. The claimant violated the fraud provisions of Sections 54(b) and 62(b) of the Act.

The claimant is required to pay fraud penalties under Section 54(b) of the Act.

It is left for the Agency to adjudicate restitution as appropriate.

Further determinations consistent with this decision are left to the Agency.

Decision Date: July 27, 2016

  
MICHAEL WAKELEY  
ADMINISTRATIVE LAW JUDGE

16-014572



## PARTICIPANTS

		07-18-16	
		Appeared	Sworn
Claimant	Frank Lucente	X	X
Representative	Laura Bradshaw Tucker, Attorney	X	
Witness			
Witness			
Witness			
Witness			
Employer			
Representative			
Witness			
Witness			
Witness			
Witness			
Witness			
Witness	Chelsea Gill, UIA Examiner	X	X

## EXHIBITS

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
	UIA	E	C			
B	X			1-11-16		Claimant Appeal (38 pg)
C	X			1-19-16		Denials of Redetermination (2 pg)
5	X			11-23-15		Notice of Redetermination – Sec. 48 (4 pg)
6	X			11-23-15		Notice of Redetermination – Sec 62(b) (3 pg)
7	X			11-23-15		Restitution (3 pg)
8	X					Certifications (18 pg)
9			X	2-24-12		Notice of Payment Due (1 pg)

16-014572

### JURISDICTION

This is a companion case to Appeal Docket Number 16-014604.

On January 29, 2016, the claimant timely appealed a January 19, 2016 Unemployment Insurance Agency (Agency) Adjudication which denied the claimant's appeal for not being received within one year of the Agency's December 1, 2010 Redetermination. The Agency's December 1, 2010 Redetermination held the claimant violated the fraud provisions, Sections 54(b) and 62(b), of the Michigan Employment Security Act (Act). Fraud monetary damages were outlined in a document entitled, "Non-Protestable Summary of Previously (Re) Determined Restitution" under a different Agency case number and Appeal Number 16-014572 involving whether the claimant was ineligible for benefits under Section 48 of the Act beginning February 16, 2010.

### ISSUE

Did the appellant/claimant establish good cause for filing a late response to the involved Determination or Redetermination?

If the appellant/claimant is able to establish good cause for filing a late response, the underlying issue to be addressed is: Did the claimant commit intentional misrepresentation warranting the additional penalties outlined under Subsections 54(b) and 62(b) of the Act?

### APPLICABLE LAW

Section 32a states:

(2) The unemployment agency may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. A reconsideration shall not be made unless the request is filed with the unemployment agency, or reconsideration is initiated by the unemployment agency with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue.

R 421.210 Unemployment insurance benefit filing requirements; definitions.

(2) As used in this rule:

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(e) "Good cause for late filing of a new, additional, or reopened claim" and "good cause for late reporting to file a continued claim" means that there is a justifiable reason, determined in accordance with a standard of conduct expected of an individual acting as a reasonable person in the light of all the circumstances, that prevented a timely filing or reporting to file as required by this rule. Examples of justifiable reasons that the agency may consider as constituting good cause include any of the following:

- (i) Acts of God.
- (ii) Working or reliance on a promise of work that did not materialize.
- (iii) Closing of agency offices, or the failure of the agency's telephonic or electronic equipment, during scheduled hours of operation.
- (iv) Delay or interruption in the delivery of mail or the delay or interruption of information by telephonic or other means by a business or governmental agency entrusted with the delivery of mail or of messages by telephonic or other means.
- (v) Personal physical incapacity or the physical incapacity or death of a relative or ward of either the individual or the individual's spouse or of any person living in the same household as the individual claiming benefits.
- (vi) Attendance at a funeral.
- (vii) Incarceration.
- (viii) Jury duty.

The appellant was advised by this Administrative Law Judge that whenever a request for redetermination or reconsideration is received after the expiration of the 30-day protest or appeal period, good cause for reconsideration of the prior determination or redetermination must be established.

Section 54(b) provides:

(b) Any employing unit or an owner, director, officer, or agent of an employing unit, a Claimant, an employee of the unemployment agency, or any other person who makes a false statement or representation knowing it to be false, or knowingly and willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other payment under this Act or under the unemployment compensation law of any state or of the federal government, either for himself or herself or any other person, to prevent or reduce the payment of benefits to an individual entitled thereto or to avoid becoming or remaining a subject employer, or to avoid or reduce a contribution or other payment required from an employing unit under this Act or under the unemployment compensation law of any state or of the federal government, as applicable, is subject to administrative fines and is punishable as follows, notwithstanding any other penalties imposed under any other statute of this state or of the United States:

16-014572



(i) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is less than \$500.00, the unemployment agency may recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 2 times that amount. For a second or subsequent violation described in this subdivision, the unemployment agency may recover damages equal to 4 times the amount obtained.

(ii) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is \$500.00 or more, the unemployment agency shall attempt to recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 4 times that amount. The unemployment agency may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the unemployment agency has not made its own determination under this subdivision, the recovery sought by the prosecutor shall include the amount described in this subdivision and shall also include 1 or more of the following penalties if the amount obtained is \$1,000.00 or more:

Section 62(b) states:

...if the unemployment agency determines that a person has intentionally made a false statement or misrepresentation or has concealed material information to obtain benefits, whether or not the person obtains benefits by or because of the intentional false statement, misrepresentation, or concealment of material information, the person shall, in addition to any other applicable interest and penalties, have his or her rights to benefits for the benefit year in which the act occurred canceled as of the date the Claimant made the false statement or misrepresentation or concealed material information, and wages used to establish that benefit year shall not be used to establish another benefit year...

#### FINDINGS OF FACT

The claimant became unemployed in 2008 and was unable to find work for approximately two years. This caused him great financial hardship and loss of his residence, resulting in the claimant not having a fixed address until 2012. He initially filed a claim for unemployment benefits in 2008, which he extended through 2010. The Agency issued a Determination in this case which found the claimant not ineligible for benefits. The claimant was again employed full time and received wages from February 20, 2010 to June 2010. However, the claimant was still incurring financial hardship and was in a state of depression, and he knowingly continued to certify with the Agency and collect benefits to which he was not entitled until June 22, 2010 (Exhibit 8).

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The Agency subsequently re-adjudicated the claimant's claim and issued a Redetermination on November 30, 2010. The Redetermination reversed the Determination and held the claimant ineligible for benefits under Section 48 of the Act beginning February 16, 2010 and required the claimant to pay restitution under Section 62 of the Act (Exhibit 5).<sup>1</sup> Also on November 30, 2010, the Agency issued a companion Redetermination finding the claimant committed intentional misrepresentation in violation of Section 54(b) and 62(b) of the Act (Exhibit 6). The Agency issued an accompanying restitution notice on December 1, 2010 (Exhibit 7).

The claimant never received the Agency's Redeterminations or restitution notice because he did not have a fixed address at the time. The next time the claimant became aware the Agency had found him ineligible for benefits was when his wages began to be garnished in 2014. However, he did not know the total amount the Agency was attempting to recoup and thought he could pay off the benefits he received from February to June 2010, so he did not immediately respond to the garnishment. After the garnishments continued past what the claimant believed he owed, he called the Agency in late 2015 and learned he had been assessed fraud penalties. The claimant updated his address with the Agency, but was not told he could file an appeal.

After contacting the Agency, the claimant sought assistance from an attorney who filed his appeal on January 11, 2016 (Exhibit B). The Agency then issued a Denial of Reconsideration or Redetermination, which denied the claimant's appeal because it was not filed within one year of the original Redeterminations (Exhibit C).

#### **REASONING AND CONCLUSIONS OF LAW**

The claimant bears the burden of proving he had good cause for filing his appeal more than one year after the Agency's Redetermination was originally issued. Here, the claimant offered credible, un rebutted testimony that he did not have a fixed address during the relevant time period and did not receive any correspondence from the Agency after he ceased collecting benefits in June 2010. The Agency also testified it received no return correspondence from the claimant after that time until he called them in 2014 following his garnishment, which indicates the claimant never received anything from the Agency after June 2010. Thus, the claimant is not at fault for never receiving the Agency's Redetermination, and likewise is not to blame for not appealing a decision of which he was not aware. The claimant then acted diligently upon learning he had been charged fraud penalties and required to repay four times the amount of benefits he had received. Therefore, the claimant had good cause under Section 32a(2) of the Act for filing his late appeal, and his appeal may be considered.

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<sup>1</sup> Due to the Agency updating its computer systems in October 2013, it no longer maintained the original adjudications in this case. However, it reproduced the adjudications on November 23, 2015 at the claimant's request.

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Regarding the claimant's eligibility for benefits under the not unemployed provisions of Section 48 of the Act, the claimant admitted on the record during the hearing he worked full time and earned wages during the relevant time period, and that he knew he was still wrongly collecting benefits. Therefore, the claimant is ineligible for benefits under Section 48 of the Act beginning February 16, 2010.

Lastly, in order for the claimant to be assessed fraud penalties under Sections 54(b) and 62(b) of the Act, the Agency must prove the claimant intentionally concealed or misrepresented his earnings during the relevant period. In this case, the Agency provided certification records showing the claimant reported he did not have any earnings from February through June 2010. The claimant also testified he continued certifying even after he returned to work full time, and he was relieved when the garnishments began because he could pay back the benefits he improperly received. These facts sufficiently prove the claimant intentionally failed to report he was employed from February through June 2010 in order to obtain benefits to which he was not entitled. Therefore, the claimant is required to pay fraud penalties under Sections 54(b) and 62(b) of the Act.

**IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME**

This Order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge, or by an office or agent office of the agency OR (2) files a written, signed, appeal to the Michigan Compensation Appellate Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

**August 26, 2016**

I, A. Anthony, certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

16-014572



Docket No.: 16-014604  
Case No.: 6610595  
Employer: DART PROPERTIES II LLC  
Claimant: FRANK LUCENTE  
SSN: XXX-XX-4637

Administrative Law Judge: Michael Wakeley

**ORDER**

The Agency's January 19, 2016 Adjudication is reversed.

The claimant had good cause for his late appeal under Section 32a(2) of the Michigan Employment Security Act (Act), and his appeal to the Agency's November 30, 2010 Redetermination may be considered.

The Agency's November 30, 2010 Adjudication is affirmed. The claimant is ineligible from receiving benefits pursuant to Section 48 of the Act beginning February 16, 2010.

The claimant is required to pay fraud penalties under Section 54(b) of the Act.

It is left for the Agency to adjudicate restitution as appropriate.

Further determinations consistent with this decision are left to the Agency.

Decision Date: July 27, 2016

  
\_\_\_\_\_  
MICHAEL WAKELEY  
ADMINISTRATIVE LAW JUDGE

16-014604

## PARTICIPANTS

		07-18-16	
		Appeared	Sworn
Claimant	Frank Lucente	X	X
Representative	Laura Bradshaw Tucker, Attorney	X	
Witness			
Witness			
Witness			
Witness			
Employer			
Representative			
Witness			
Witness			
Witness			
Witness			
Witness	Chelsea Gill, UIA Examiner	X	X
Witness			

## EXHIBITS

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
	UIA	E	C			
B	X			1-11-16		Claimant Appeal (38 pg)
C	X			1-19-16		Denials of Redetermination (2 pg)
5	X			11-23-15		Notice of Redetermination – Sec. 48 (4 pg)
6	X			11-23-15		Notice of Redetermination – Sec 62(b) (3 pg)
7	X			11-23-15		Restitution (3 pg)
8	X					Certifications (18 pg)
9			X	2-24-12		Notice of Payment Due (1 pg)

16-014604



## JURISDICTION

This is a companion case to Appeal Docket Number 16-014572.

On January 29, 2016, the claimant timely appealed a January 19, 2016 Unemployment Insurance Agency (Agency) Adjudication which denied the claimant's appeal for not being received within one year of the Agency's December 1, 2010 Redetermination. The Agency's December 1, 2010 Redetermination held the claimant ineligible for benefits under Section 48 of the Michigan Employment Security Act (Act) beginning February 16, 2010. The claimant was required, under Section 62(a), to repay benefits improperly received and to pay fraud penalties under Section 54(b) of the Act.

## ISSUES

Was the appellant/claimant's appeal to the Agency's Redetermination late without good cause under Section 32a(2) of the Act?

If the appellant/claimant had good cause for his late appeal, the next issues to be addressed are: Is the claimant entitled to benefits under the "employed" provisions of Subsections 48 of the Act?

Did the claimant commit intentional misrepresentation under Subsection 54(b) of the Act?

## APPLICABLE LAW

Section 32a states:

(2) The unemployment agency may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. A reconsideration shall not be made unless the request is filed with the unemployment agency, or reconsideration is initiated by the unemployment agency with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue.

R 421.270 Good cause for reconsideration and reopening.

- (1) In determining if good cause exists under sections 32a, 33, and 34 of the act, after the 30-day protest or appeal period has expired, for reconsideration of any prior determination or redetermination or for reopening and review, good cause shall include, but not be limited to, any of the following situations:

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- (a) If an interested party has newly discovered material facts which, through no fault of the party, were not available to the party at the time of the determination, redetermination, order, or decision. However, a request for reconsideration of a determination or redetermination or for reopening a decision or order made after the expiration of the statutory 30-day period solely for the purpose of evading or avoiding such statutory period is not for good cause.
  - (b) If the agency has additional or corrected information.
  - (c) If an administrative clerical error is discovered in connection with a determination, redetermination, order, or decision.
  - (d) If an interested party has a legitimate inability to act sooner.
  - (e) If an interested party fails to receive a reasonable and timely notice, order, or decision.
  - (f) If an interested party is prevented from acting sooner due to an untimely delivery of a protest, appeal, or agency document by a business or governmental agency entrusted with delivery of mail.
  - (g) If an interested party has been misled by incorrect information from the agency, the office of appeals, or the board of review.
- (2) If, before the start of an initial hearing before the office of appeals, the agency receives new, additional, or corrected information or discovers an administrative clerical error in the claim, the matter may be returned to the agency for reconsideration and redetermination.

The appellant was advised by this Administrative Law Judge that whenever a request for redetermination or reconsideration is received after the expiration of the 30-day protest or appeal period, good cause for reconsideration of the prior determination or redetermination must be established.

Section 48 of the Act provides:

(1) An individual shall be considered unemployed for any week during which he or she performs no services and for which remuneration is not payable to the individual, or for any week of less than full-time work if the remuneration payable to the individual is less than 1-1/2 times his or her weekly benefit rate, except that for payable weeks of benefits beginning after the effective date of the amendatory act that added section 15a and before October 1, 2015, an individual is considered unemployed for any week or less of full-time work if the remuneration payable to the individual is less than 1-3/5 times his or her weekly benefit rate. However, any loss of remuneration incurred by an individual during any week resulting from any cause other than the failure of the individual's employing unit to furnish full-time, regular employment shall be included as remuneration earned for purposes of this section and section 27(c). The total amount of remuneration lost shall be determined pursuant to regulations prescribed by the unemployment agency. For the purposes of this act, an individual's weekly benefit rate means the weekly benefit rate determined pursuant to section 27(b).

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(2) All amounts paid to a claimant by an employing unit or former employing unit for a vacation or a holiday, and amounts paid in the form of retroactive pay, pay in lieu of notice, severance payments, salary continuation, or other remuneration intended by the employing unit as continuing wages or other monetary consideration as the result of the separation, excluding SUB payments as described in section 44, shall be considered remuneration in determining whether an individual is unemployed under this section and also in determining his or her benefit payments under section 27(c), for the period designated by the contract or agreement providing for the payment, or if there is no contractual specification of the period to which payments shall be allocated, then for the period designated by the employing unit or former employing unit. However, payments for a vacation or holiday, or the right to which has irrevocably vested, after 14 days following a vacation or holiday shall not be considered wages or remuneration within the meaning of this section.

(3) An individual shall not be considered to be unemployed during any leave of absence from work granted by an employer either at the request of the individual or pursuant to an agreement with the individual's duly authorized bargaining agent, or in accordance with law. An individual shall neither be considered not unemployed nor on a leave of absence solely because the individual elects to be laid off, pursuant to an option provided under a collective bargaining agreement or written employer plan that permits an election, if there is a temporary layoff because of lack of work and the employer has consented to the election.

The burden is on the Claimant to prove their eligibility. *Dwyer v Unemployment Compensation Agency*, 321 Mich 178 (1948).

Compensation earned, not compensation received, is the test of remuneration. *Phillips v Unemployment Compensation Agency*, 323 Mich 188 (1948).

Section 54(b) provides:

Any employing unit or an owner, director, officer, or agent of an employing unit, a claimant, an employee of the unemployment agency, or any other person who makes a false statement or representation knowing it to be false, or knowingly and willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other payment under this act or under the unemployment compensation law of any state or of the federal government, either for himself or herself or any other person, to prevent or reduce the payment of benefits to an individual entitled thereto or to avoid becoming or remaining a subject employer, or to avoid or reduce a contribution or other payment required from an employing unit under this act or under the unemployment compensation law of any state or of the federal government, as applicable, is subject to administrative fines and is punishable as follows, notwithstanding any other penalties imposed under any other statute of this state or of the United States:

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(i) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is less than \$500.00, the unemployment agency may recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 2 times that amount. For a second or subsequent violation described in this subdivision, the unemployment agency may recover damages equal to 4 times the amount obtained.

(ii) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is \$500.00 or more, the unemployment agency shall attempt to recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 4 times that amount. The unemployment agency may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the unemployment agency has not made its own determination under this subdivision, the recovery sought by the prosecutor shall include the amount described in this subdivision and shall also include 1 or more of the following penalties if the amount obtained is \$1,000.00 or more:

(A) Subject to redesignation under subsection (I), if the amount obtained or withheld from payment as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is \$1,000.00 or more but less than \$25,000.00, then 1 of the following:

(I) Imprisonment for not more than 1 year.

(II) The performance of community service of not more than 1 year but not to exceed 2,080 hours.

(III) A combination of (I) and (II) that does not exceed 1 year.

(B) If the amount obtained or withheld from payment as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is \$25,000.00 or more, then 1 of the following:

(I) Imprisonment for not more than 2 years.

(II) The performance of community service of not more than 2 years but not to exceed 4,160 hours.

(III) A combination of (I) and (II) that does not exceed 2 years.

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(C) If the knowing false statement or representation or the knowing and willful failure to disclose a material fact made to obtain or withhold an amount from payment does not result in a loss to the commission, then a recovery shall be sought equal to 3 times the amount that would have been obtained by the knowing false statement or representation or the knowing and willful failure to disclose a material fact, but not less than \$1,000.00, and 1 of the following:

(I) Imprisonment for not more than 2 years.

(II) The performance of community service of not more than 2 years but not to exceed 4,160 hours.

(III) A combination of (I) and (II) that does not exceed 2 years.

The recovery of improperly paid benefits is set forth in Section 62(b):

For benefit years beginning on or after October 1, 2000, if the unemployment agency determines that a person has intentionally made a false statement or misrepresentation or has concealed material information to obtain benefits, whether or not the person obtains benefits by or because of the intentional false statement, misrepresentation, or concealment of material information, the person shall, in addition to any other applicable interest and penalties, have his or her rights to benefits for the benefit year in which the act occurred canceled as of the date the claimant made the false statement or misrepresentation or concealed material information, and wages used to establish that benefit year shall not be used to establish another benefit year. A chargeable employer may protest a claim filed after October 1, 2014 to establish a successive benefit year under Section 46(c), if there was a determination by the unemployment agency or decision of a court or administrative tribunal finding that the claimant made a false statement, made a misrepresentation, or concealed material information related to his or her report of earnings for a preceding benefit year claim. If a protest is made, any unreported earnings from the preceding benefit year that were falsely stated, misrepresented, or concealed shall not be used to establish a benefit year for a successive claim. Before receiving benefits in a benefit year established within 4 years after cancellation of rights to benefits under this subsection, the individual, in addition to making the restitution of benefits established under subsection (a), may be liable for an additional amount as otherwise determined by the unemployment agency under this Act, which may be paid by cash, deduction from benefits, or deduction from a tax refund. The individual is liable for any fee the federal government imposes with respect to instituting a deduction from a federal tax refund. Restitution resulting from the intentional false statement, misrepresentation, or concealment of material information is not subject to the 50% limitation provided in subsection (a)

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### FINDINGS OF FACT

The claimant became unemployed in 2008 and was unable to find work for approximately two years. This caused him great financial hardship and loss of his residence, resulting in the claimant not having a fixed address until 2012. He initially filed a claim for unemployment benefits in 2008, which he extended through 2010. The Agency issued a Determination in this case which found the claimant not ineligible for benefits. The claimant was again employed full time and received wages from February 20, 2010 to June 2010. However, the claimant was still incurring financial hardship and was in a state of depression, and he knowingly continued to certify with the Agency and collect benefits to which he was not entitled until June 22, 2010 (Exhibit 8).

The Agency subsequently re-adjudicated the claimant's claim and issued a Redetermination on November 30, 2010. The Redetermination reversed the Determination and held the claimant ineligible for benefits under Section 48 of the Act beginning February 16, 2010 and required the claimant to pay restitution under Section 62 of the Act (Exhibit 5).<sup>1</sup> Also on November 30, 2010, the Agency issued a companion Redetermination finding the claimant committed intentional misrepresentation in violation of Section 54(b) and 62(b) of the Act (Exhibit 6). The Agency issued an accompanying restitution notice on December 1, 2010 (Exhibit 7).

The claimant never received the Agency's Redeterminations or restitution notice because he did not have a fixed address at the time. The next time the claimant became aware the Agency had found him ineligible for benefits was when his wages began to be garnished in 2014. However, he did not know the total amount the Agency was attempting to recoup and thought he could pay off the benefits he received from February to June 2010, so he did not immediately respond to the garnishment. After the garnishments continued past what the claimant believed he owed, he called the Agency in late 2015 and learned he had been assessed fraud penalties. The claimant updated his address with the Agency, but was not told he could file an appeal.

After contacting the Agency, the claimant sought assistance from an attorney who filed his appeal on January 11, 2016 (Exhibit B). The Agency then issued a Denial of Reconsideration or Redetermination, which denied the claimant's appeal because it was not filed within one year of the original Redeterminations (Exhibit C).

<sup>1</sup> Due to the Agency updating its computer systems in October 2013, it no longer maintained the original adjudications in this case. However, it reproduced the adjudications on November 23, 2015 at the claimant's request.

16-014604



**REASONING AND CONCLUSIONS OF LAW**

The claimant bears the burden of proving he had good cause for filing his appeal more than one year after the Agency's Redetermination was originally issued. Here, the claimant offered credible, un rebutted testimony that he did not have a fixed address during the relevant time period and did not receive any correspondence from the Agency after he ceased collecting benefits in June 2010. The Agency also testified it received no return correspondence from the claimant after that time until he called them in 2014 following his garnishment, which indicates the claimant never received anything from the Agency after June 2010. Thus, the claimant is not at fault for never receiving the Agency's Redetermination, and likewise is not to blame for not appealing a decision of which he was not aware. The claimant then acted diligently upon learning he had been charged fraud penalties and required to repay four times the amount of benefits he had received. Therefore, the claimant had good cause under Section 32a(2) of the Act for filing his late appeal, and his appeal may be considered.

Regarding the claimant's eligibility for benefits under the not unemployed provisions of Section 48 of the Act, the claimant admitted on the record during the hearing he worked full time and earned wages during the relevant time period, and that he knew he was still wrongly collecting benefits. Therefore, the claimant is ineligible for benefits under Section 48 of the Act beginning February 16, 2010.

Lastly, in order for the claimant to be assessed fraud penalties under Sections 54(b) and 62(b) of the Act, the Agency must prove the claimant intentionally concealed or misrepresented his earnings during the relevant period. In this case, the Agency provided certification records showing the claimant reported he did not have any earnings from February through June 2010. The claimant also testified he continued certifying even after he returned to work full time, and he was relieved when the garnishments began because he could pay back the benefits he improperly received. These facts sufficiently prove the claimant intentionally failed to report he was employed from February through June 2010 in order to obtain benefits to which he was not entitled. Therefore, the claimant is required to pay fraud penalties under Sections 54(b) and 62(b) of the Act. (The assessment of penalties due to fraud is reviewed under Appeal Docket Number 16-014572-UA).

16-014604

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**IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME**

This Order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge, or by an office or agent office of the agency OR (2) files a written, signed, appeal to the Michigan Compensation Appellate Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

**August 26, 2016**

I, A. Anthony, certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

16-014604

072616F0073021



By facsimile to 517-241-7326

AUG 26 2016

FILED: msf

**MICHIGAN COMPENSATION APPELLATE COMMISSION**

FRANK LUCENTE, Claimant

Case Nos.: 6281815, 6810595 — 16-014572 + 16-014604

SS: XXX-XX-4637

**APPEARANCE**

Laura K. Bradshaw Tucker (P42652) of GWINN TAURIINEN PLLC enters her appearance, pro bono, on behalf of Frank Lucente for this appeal to the MCAC.

**APPEAL OF JULY 27 ORDER OF ADMINISTRATIVE LAW JUDGE**

Issue: Unemployment Insurance Agency's inflexible application of the maximum penalty provisions of MCL 421.54(b) to all Claimants against whom a determination of misrepresentation has been entered violates terms of the statute.

Frank Lucente, through counsel Laura Bradshaw Tucker of GWINN TAURIINEN PLLC, asks this Commission to review the July 27, 2016 Order of the Hon. Michael Wakeley and the response of the Unemployment Insurance Agency to that decision. Claimant Frank. Lucente also asks this Commission — as he asked the administrative judge in his appeal to the Michigan Appellate Hearing System — that the Unemployment Insurance Agency recognize its discretion to impose a penalty of less than the quadruple amount, review what factors, if any, support imposition of the maximum penalty against Mr. Lucente, and that it place these reasons on the record. Mr. Lucente also asks that the Unemployment Insurance Agency review the interest he has been charged on the overpayment amount and recalculate any amount owing on the penalty in light of the judge's ruling, and that the Agency review the discrepancy between its original Restitution Request for repayment of a \$4,794 overpayment amount (plus penalties) and its current request for repayment of an overpayment amount of \$6,968 (plus penalties) and place this reason on the record. There appears to have been a material error at some point that resulted in Mr. Lucente being charged for an additional six weeks of benefits.

The facts and law in support of this request are outlined below. A copy of Judge Wakeley's Order(s) and an Affidavit of Counsel are attached as Exhibits 1 and 3. Additional documentation is provided in Exhibits 2 and 4 through 6.

**FACTS**

Claimant Frank Lucente was laid off in 2008. He struggled to find work, but was unable to do so until February 2010. At that time, being severely depressed, deeply in



debt, and unsure how long the new job would last, he continued to certify with the Unemployment Insurance Agency and receive full benefits until his benefits expired in June 2010. At the July 18, 2016 hearing on this case, the Administrative Law Judge, Hon Michael Wakeley, adopted these facts (Exhibit 1).

Until early June 2010, Mr. Lucente maintained a Post Office box because he had no fixed address (at one point he was homeless). In June that year, he cancelled this service. Since he had used up his unemployment benefits, and no longer saw any need to remain in contact with the UIA, he did not provide the UIA with a new mailing address. In fact, he continued to move from place to place until 2012.

In early 2010, the UIA flagged Mr. Lucente's file for review and on July 7, 2010 sent a Request for Information to Mr. Lucente's P.O. Box – a request he never received. In late November or early December 2010, having had no response from Mr. Lucente, the UIA issued Redetermination of his eligibility for benefits. Since he had been working full time while certifying for benefits, he was ineligible and was therefore responsible for repaying the UIA the benefits he had received and also, due to his "misrepresentation" to the UIA, responsible for a quadruple penalty under MCL 421.62(b) and MCL 421.54(b). The UIA requested repayment of \$4,794 for benefits improperly received, and a quadruple penalty for misrepresentation of \$18,276, for a total of \$23,070 (Exhibit 2). The Redetermination and the request for restitution were mailed to the P.O. Box; Mr. Lucente never received them.

Mr. Lucente did not discover the UIA was seeking repayment for the benefits he had improperly received until around the summer of 2014, when he learned his wages were being garnished. His reaction was relief – he would no longer have to carry the burden of having taken something to which he was not entitled. He was ready to repay the UIA. Judge Wakeley, in his July 27, 2016 Order in this case, adopted these facts (Exhibit 1). The judge noted that when Mr. Lucente learned of the garnishment in 2014 he "did not know the total amount the Agency was trying to recoup and thought he could pay off the benefits he received from February to June 2010, so he did not immediately respond to the garnishment." When the garnishment continued, even after Mr. Lucente had paid off the amount he thought he owed, he belatedly called the Agency in late 2015. It was then he learned for the first time of the 2010 determination and the quadruple penalty assessed against him. At this point, he was informed it was too late to file an appeal. Faced with a bill he found it impossible to pay, Mr. Lucente reluctantly sought the assistance of counsel, and an appeal was filed on his behalf in January 2016.

That same month, the appeal was denied by the UIA as untimely. More than a year had passed since the 2010 determination of which Mr. Lucente learned only in November 2015.

On top of this loss, Mr. Lucente testified at the hearing that although he had managed to maintain fairly steady employment since 2012, he was laid off in January



2018 and, ineligible for unemployment benefits because of the earlier finding of misrepresentation, again found himself in dire financial straits.

An appeal of the UIA's decision was made to the Michigan Administrative Hearing System, and, as noted, a hearing in this case was held on July 18, 2016 before Administrative Judge Michael Wakeley. At this hearing, Mr. Lucente, through counsel, argued that he had never received notice of the UIA's 2010 redetermination and therefore should not be barred from appealing that finding, and also that the quadruple penalty imposed by the UIA was excessive given the facts of the case and Mr. Lucente's financial condition.

In a sympathetic Opinion and Order issued July 27, 2016, Judge Wakeley found Mr. Lucente was not to blame for filing his late appeal because he had not received the Redetermination and Restitution in his case until November 2015. The judge allowed the appeal to be considered. (Exhibit 1)

However, the judge declined to overturn the UIA's finding of misrepresentation, basing this decision on Mr. Lucente's testimony that, although he was confused and not thinking clearly, he was aware that he was not eligible for benefits when he certified with MARVIN from February 2010 to June 2010.

Where there is a finding of misrepresentation involving an amount of more than \$500.00, in addition to recovering the actual overpayment amount, the Agency "may also recover damages equal to 4 times" the amount obtained by the false statement. MCL 421.54(b)(ii) (emphasis added). In his order, Judge Wakeley noted Mr. Lucente was required to pay fraud penalties under MLC 421.54(b), but recognized the Agency's discretion to impose something other than the quadruple amount by adding, "It is left for the Agency to adjudicate restitution as appropriate." (Exhibit 1)

On or about August 16, 2016. Counsel for Mr. Lucente, who is now working pro bono, contacted the Agency Representative involved in the case, to discover if the Agency might exercise its discretion and impose a lesser penalty. The Representative, although sympathetic to Mr. Lucente's plight, stated she could not impose a lesser penalty, because internal regulations *mandate* the imposition of a quadruple penalty any time there is a finding of misrepresentation involving an amount over \$500.00 (see Exhibit 3, Affidavit of Laura Bradshaw Tucker). No reply was given to an e-mail request for a citation to the regulation.

On August 23, 2016 the Agency mailed a "revised" request for Restitution/List of Overpayments. The overpayment amount is listed as \$8,968, the penalty is \$26,964 for a total of \$33,930 (Exhibit 4). The Agency has once again requested the maximum penalty possible, a quadruple penalty, without any indication of why the maximum penalty is appropriate on the facts of the case. The UIA has again failed to recognize or exercise its discretion to impose a penalty that is appropriate to the facts of the case and to the circumstances of the Claimant. A lesser penalty, given the Court's findings, would be appropriate not only because the facts as testified to at the hearing and as found by the



judge, show that there are many mitigating factors involved which would require the imposition of a penalty less than quadruple amount, but also because Mr. Lucente became responsible for interest before he was informed of the debt. That is, because he never received notice of the Agency's redetermination, he never had an opportunity to begin making payment on the overpayment amount, and yet, was charged interest when he was not aware of any amount due and owing.

### ARGUMENT

I. Mr. Lucente should not be required to pay a quadruple penalty, where no consideration of the facts of the alleged offense or the circumstances of the offender have been made and where the Agency automatically and improperly imposes a quadruple penalty whenever a misrepresentation has been made on an amount over \$500, contrary to the clear language of the statute and contrary to "equity and good conscience" under MCL 421.52a.

The statute outlining the penalties for a making a "knowing false statement or representation or the knowing and willful failure to disclose a material fact" in order to receive unemployment benefits requires restitution of the full amount received as a result of the misrepresentation. However, the imposition of *additional* penalties is permissive; the statute states that the agency "*may* also recover damages equal to 4 times" the amount obtained by the false statement. MCL 421.54(b)(ii) (emphasis added).<sup>1</sup> The Agency may also refer the case to the prosecutor, who may then seek recovery of the overpayment amount (restitution) and also request imposition of a term of prison for not more than one year, or may require the performance of up to 2,080 hours (no more than one year) of community service. MCL 421.54(b)(iii)(A)(i) and (ii).

The legislature, when enacting the statute, gave the UIA discretion to impose a penalty of up to 4 times the amount obtained by the misrepresentation. The use of the word "may" in the language of the statute is not window dressing. The Legislature is very aware of the difference between "may" and "shall" and has reviewed the statutory provisions regarding restitution several times over the last decade. In 2013, it amended Section 62 to require the Agency to waive recovery of an improperly paid benefit if the payment was not the fault of the individual and was contrary to equity and good conscience, changing the statutory language from "may" to "shall" and adding definitions for "contrary to equity and good conscience." HB 4949-4954. In 2009, the Senate revisited Section 54(b) and upped the penalty for a second or subsequent violation involving less than \$500 from a possible double penalty to a possible quadruple penalty, SB 613 (2009). The permissive language of the statute, however, remained unchanged. The imposition

<sup>1</sup>The maximum penalty – payment of quadruple the amount received – *may* be imposed where the amount received as a result of the misrepresentation is over \$500. Where the amount received is less than \$500 a double penalty may apply. The statutory language clearly indicates that the imposition of a penalty, and the amount, is permissive.



of a quadruple penalty is something the Agency *may* impose, but is not required to impose.

The Agency itself argues that the penalties it imposes, like those in a criminal case, are not dischargeable in Bankruptcy under Chapter 7, and has also argued (with less success) they are similarly not dischargeable in Bankruptcy under Chapter 13. See *In Re Andrews*, US Bankruptcy Court, E.D. Michigan, Southern Division, Case No. 15-46058, 15-04724 (October 2, 2015). (A copy of the opinion is attached as Exhibit 5.)

In a criminal case, the Court, like the Agency here, is given the power to impose a sentence up to a maximum. Clearly, a judge who hits every convicted defendant who comes before him or her with the maximum sentence possible would be up before the Judicial Tenure Commission, and his or her sentences reversed on multiple appeals.

Discretionary language is placed in a statute for a reason: In the criminal context, justice requires that a sentence be appropriate to the facts of the offense and to the particular offender. We recognize as a society that it is wrong to require a first-time offender who may have strayed from the straight and narrow out of financial desperation to serve the same sentence as a multiple offender whose criminal path seems to have permanently veered from the road of lawfulness.

The spirit and purpose of the Michigan Employment Security Act is "to safe guard the general welfare by dispensing benefits to ameliorate the disastrous effects of involuntary unemployment." *Schultz v Oakland County*, 187 Mich App 96, 102-103 (1991). That purpose is undermined when the penalty for a violation of the Act – whether due to financial desperation or ignorance – is effectively a sentence to life on the financial edge. The "disastrous effects of unemployment" are, often, what lead an otherwise blameless citizen to collect benefits to which he knows he is not entitled. The lines of morality may become blurred for those who face financial collapse.

When the Legislature gave the Agency discretion, clearly, it expected the Agency to use that discretion. The Agency, instead, imposes the maximum penalty *every time* there is a finding of misrepresentation that resulted in the Claimant improperly receiving benefits of more than a statutory amount.<sup>2</sup> The penalty for someone who misleads the UIA, and continues to certify for unemployment while earning \$2,500 a week should not be the same as the penalty for someone who continues to certify while earning \$8.00 an hour. The penalty imposed should be something the Claimant can repay without falling behind on his or her rent, foregoing necessary medical care, or being forced in foreclosure and bankruptcy. The penalty for a Claimant who has been law abiding, worked hard, and contributed to the community should not be the same as that for someone who makes no real effort to find work, lives off others, commits petty frauds, and contributes nothing to society.

<sup>2</sup> The Agency representative's statement to counsel that internal regulations require imposition of the maximum in all cases is without merit. Statutes take precedence over the regulations created to support them.



A court, when imposing sentence in a criminal case, should ensure the sentence is "tailored to the particular circumstances of the case and the offender in an effort to balance both society's need for protection and its interest in maximizing the offender's rehabilitative potential." *People v McFarlin*, 389 Mich 557, 574 (1973). In the present case, no consideration has been made of Mr. Lucente's particular circumstances. As for reformation, Mr. Lucente has regretted his conduct from the time he allowed his financial desperation and depression to overcome his good sense and he certified he was looking for work when he was not. Mr. Lucente has already paid a high price for his actions -- which resulted in rendering him destitute when he was again unemployed -- and has, he believes, repaid the state the money he wrongly received. He got the message. To require payment of a quadruple penalty will prevent Mr. Lucente from moving forward and thus impede his "rehabilitative potential."

In the criminal context, the Michigan legislature recognized more than 10 years ago with Public Acts 665, 666 and 670 of 2002, that placing a defendant on probation for life is itself an injustice, a sentence that restricts a defendant's reasonable life choices far beyond that merited by the misconduct and often needlessly requires continued supervision. The penalty here is analogous to lifetime probation -- it will continue long after Mr. Lucente has "learned his lesson" and, like lifetime probation, will operate as a continual bar to his full participation in society.

The penalty imposed here not only fails to consider Mr. Lucente's ability to pay, but is also out of proportion to the misconduct committed. If Mr. Lucente had committed a *larceny* of an item valued between \$1,000 and \$20,000, the maximum sentence he could face would be five years in prison or a fine of "not more than \$10,000 or three times the value of the property stolen." MCL 750.356(3)(a). Here, where the property taken was that which the state was willing to award him, as long as he was out of work, he is subject to a penalty of *four times* the amount he received, plus interest -- in addition to repayment of the original amount. The punishment for this crime -- a crime against which he was unable to defend himself in court, a right that would have been his if he had stolen money from a business or someone's home -- will be unending. Claimant does not have the resources to pay \$125 every month, a repayment that would take him decades.<sup>3</sup>

Mr. Lucente works primarily in maintenance. His income is above the federal poverty level, but he is in the bottom economic quartile. While paying fines totalling over \$30,000 might be unwelcome to a white collar professional, to a man like Mr. Lucente it is a financial disaster. The statute clearly recognizes that the ability of the Claimant to pay a penalty is a factor that must be considered before the UIA demands payment of quadruple the restitution amount. It is because this factor must be considered that the statute gives the Agency discretion on whether or not to seek imposition of a penalty, and,

<sup>3</sup> In May 2012 the UIA mailed a Final Notice of Payment due to Mr. Lucente's former P.O. Box. At that time the amount of the overpayment was listed as \$6,966 -- a substantial increase over the \$4,794 originally requested in December 2010. The total amount was \$26,964. At the July 18 hearing, the UIA representative indicted the difference was due to interest assessed.



if imposed, the size of the penalty. It is why the prosecutor may ask that a Claimant found guilty of making misleading statements to the UIA serve a prison term, or simply serve community service. And it is a factor that was not considered in this case.

The UIA's inflexible imposition of the mandatory penalties of MCR 421.54(b) is not only wrong on the facts of this case, it is simply flat-out wrong. The Unemployment Insurance Agency's reliance on MIDAS, a software system that mechanically found claimants guilty of fraud and then inflexibly proceeded to garnish their wages and seize their taxes whether or not the claimants had ever been advised of the findings or afforded a chance to appeal, was held to be a denial of due process in a March opinion in the Court of Claims. The Agency now reviews more aspects of each case personally. The imposition of the maximum possible penalties on all against whom a determination of misrepresentation has been made is a violation due process, whether based on the robotic decisions of MIDAS software or whether done as a matter of convenience for admittedly overburdened and overworked staff at the UIA.

The facts of this case, and of this Claimant, require the imposition of a penalty less than quadruple the amount. The Agency has discretion. Claimant asks this Commission to request the Agency to use that discretion and consider the facts of the case and of the Claimant, and impose a penalty of only one or two times the overpayment amount. Claimant further asks this Commission to request the UIA to place its reasons for any penalty imposed on the record. If the Agency once again imposes the maximum quadruple penalty and once again bases its imposition of this penalty on nothing more than the fact that a misrepresentation occurred, without any consideration of the facts of the present case, of the offender, and of the Claimant's ability to pay the penalty, Mr. Lucente asks the Commission to reverse the UIA's determination.

**II. Where Claimant Frank Lucente did not have formal notice of the determinations against him until November 2015, the accrued interest on the unpaid overpayment amount must be recalculated.**

At the July 18, 2016 hearing, Administrative Judge Michael Wakeley, based on the testimony presented, found that Mr. Lucente had not been informed of the Agency's December 2010 Redetermination and Restitution. The judge ruled that the Agency's numerous letters, sent from July 2010 onward, were never received by Mr. Lucente. In support of this holding was not only Mr. Lucente's testimony that he had cancelled his P.O. box and never received the letters, but the testimony of the UIA representative that over a more than four years, Mr. Lucente never responded to a single letter (Exhibit 1).

Based on Mr. Lucente's testimony, the judge found that Mr. Lucente did not learn the UIA was seeking repayment of the benefits he improperly received until 2014 when he learned, from his employer, that his wages were being garnished. The court noted Mr. Lucente did not know the total amount the Agency sought to recoup, "so he did not immediately respond to the garnishment." However, when the garnishment continued even though Mr. Lucente believed he had paid whatever he owed in full, he contacted the



UIA. As noted, it was only then, in November 2015, that he learned of the total amount – now including significant interest – the UIA sought from him.

When the judge allowed the appeal to proceed because Mr. Lucente had no notice of the determinations and redeterminations made against him by the UIA that a ruling meant that Mr. Lucente had no notice of the fact that he owed money to the UIA. Obviously, if he didn't know he owed anything, he could not make any payments. And, if he could not make payments on the debt of which he was unaware, the interest that accrued on that debt for the period of time in which Mr. Lucente was in ignorance of his duty to pay, should be rescinded and any amount received as interest applied instead to the overpayment principal.

The UIA has made no adjustments to the amount it seeks to collect from Mr. Lucente despite the fact that interest accrued on a debt of which Mr. Lucente never had notice for at the very least three and a half years.

Accordingly, Mr. Lucente asks this Court to require the UIA to recalculate the amount owed it to exclude any interest which accrued before Mr. Lucente had notice of the debt.

**III. The Agency must review and revise its Restitution request and list of Overpayments where a portion of the overpayment amount requested is based on Claimant's receipt of federal supplemental benefits and where the Agency's original List of Overpayments did not include any state benefit payments after May 8, 2010.**

The original Restitution/List of Overpayments in this case listed Mr. Lucente's receipt of state benefits of \$362 per week for the weeks ending February 20, 2010, through May 8, 2010. He also received federal supplemental benefits of \$25 per week for the weeks ending February 20, 2010 through June 19, 2010. On this list of benefits received, titled "Non-Protestable Summary of Previously (Re) Determined Restitution, with a mail date of November 23, 2015,<sup>4</sup> each federal supplemental payment is listed separately (Exhibit 2).

The current Restitution list of overpayments (Exhibit 4), and a copy of the Final Notice of Payment due (Exhibit 6) received as part of Mr. Lucente's 2015 request for his UIA file, list benefits received in the amount of \$387 week for the weeks ending February 20, through June 19, 2010 for a total overpayment amount of \$6,966, with a penalty of \$26,964, for a grand total of \$33,930. At some point, apparently, the Agency charged Mr. Lucente a full six weeks of additional state benefits to his account. The materials Mr. Lucente received from the UIA do not indicate the date on which his state benefits actually expired.

The difference in the amount due on the Notice of Payment Due and the Redetermined Restitution was questioned at the hearing, but was attributed to accrued

<sup>4</sup> The letter is a recreation of the original Determination issued in December 2010.



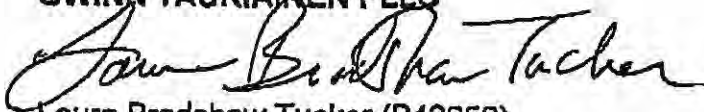
interest. Based on the materials Mr. Lucente received in response to his November 2015 request for his UIA file, it does not appear that the additional six weeks of benefits was ever included in a Redetermination or list of overpayments prior to August 23, 2016.

It is not clear why an additional six weeks of benefits was added in the years after the initial Redetermination and Request for Restitution. Mr. Lucente therefore asks this Commission to require the UIA to investigate and indicate on the record why and when the additional six weeks were added to Mr. Lucente's account, and to recalculate the overpayment amount if, as Mr. Lucente suspects, it is determined that he did not receive state EUC benefits after the week ending May 8, 2010.

Finally, Mr. Lucente would note that the additional benefits of \$25 per week received during this period were part of a federal program involving federal funds; repayment of the federal funds to the state under state law is not proper. The additional \$25 per week benefits received should therefore be deducted from the overpayment amount due the UIA.

Respectfully submitted,

GWINN TAURIANEN PLLC



Laura Bradshaw Tucker (P42652)

Cc: Frank Lucente  
UIA Fraud Investigation

# EXHIBIT 1



STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Form 1850

DANIEL A GWINN, ESQ.  
GWINN TAURIANEN  
901 WILSHIRE DRIVE, SUITE 550  
TROY, MI 48084

Docket No.: 16-014572  
Case No.: 6281815  
Employer: DART PROPERTIES II LLC  
Claimant: FRANK LUCENTE  
SSN: XXX-XX-4637

Administrative Law Judge: Michael Wakeley

**ORDER**

The Agency's January 19, 2016 Adjudication is reversed.

The claimant had good cause for his late appeal under Section 32a(2) of the Michigan Employment Security Act (Act), and his appeal to the Agency's November 30, 2010 Redetermination may be considered.

The Agency's November 30, 2010 Adjudication is affirmed. The claimant violated the fraud provisions of Sections 54(b) and 62(b) of the Act.

The claimant is required to pay fraud penalties under Section 54(b) of the Act.

It is left for the Agency to adjudicate restitution as appropriate.

Further determinations consistent with this decision are left to the Agency.

Decision Date: July 27, 2016

  
MICHAEL WAKELEY  
ADMINISTRATIVE LAW JUDGE

16-014572

## PARTICIPANTS

		07-18-18	
		Appeared	Sworn
Claimant	Frank Lucente	X	X
Representative	Laura Bradshaw Tucker, Attorney	X	
Witness			
Witness			
Witness			
Witness			
Employer			
Representative			
Witness			
Witness			
Witness			
Witness			
Witness			
Witness	Chelsea Gill, UIA Examiner	X	X

## EXHIBITS

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
UIA	E	C				
B	X			1-11-18		Claimant Appeal (38 pg)
C	X			1-19-16		Denials of Redetermination (2 pg)
5	X			11-23-15		Notice of Redetermination – Sec. 48 (4 pg)
6	X			11-23-15		Notice of Redetermination – Sec 62(b) (3 pg)
7	X			11-23-15		Restitution (3 pg)
8	X					Certifications (18 pg)
9			X	2-24-12		Notice of Payment Due (1 pg)

16-014572



### JURISDICTION

This is a companion case to Appeal Docket Number 16-014604.

On January 29, 2016, the claimant timely appealed a January 19, 2016 Unemployment Insurance Agency (Agency) Adjudication which denied the claimant's appeal for not being received within one year of the Agency's December 1, 2010 Redetermination. The Agency's December 1, 2010 Redetermination held the claimant violated the fraud provisions, Sections 54(b) and 62(b), of the Michigan Employment Security Act (Act). Fraud monetary damages were outlined in a document entitled, "Non-Protestable Summary of Previously (Re) Determined Restitution" under a different Agency case number and Appeal Number 16-014572 involving whether the claimant was ineligible for benefits under Section 48 of the Act beginning February 16, 2010.

### ISSUE

Did the appellant/claimant establish good cause for filing a late response to the involved Determination or Redetermination?

If the appellant/claimant is able to establish good cause for filing a late response, the underlying issue to be addressed is: Did the claimant commit intentional misrepresentation warranting the additional penalties outlined under Subsections 54(b) and 62(b) of the Act?

### APPLICABLE LAW

Section 32a states:

(2) The unemployment agency may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. A reconsideration shall not be made unless the request is filed with the unemployment agency, or reconsideration is initiated by the unemployment agency with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue.

R 421.210 Unemployment insurance benefit filing requirements; definitions.

(2) As used in this rule:

16-014572



(e) "Good cause for late filing of a new, additional, or reopened claim" and "good cause for late reporting to file a continued claim" means that there is a justifiable reason, determined in accordance with a standard of conduct expected of an individual acting as a reasonable person in the light of all the circumstances, that prevented a timely filing or reporting to file as required by this rule. Examples of justifiable reasons that the agency may consider as constituting good cause include any of the following:

- (i) Acts of God.
- (ii) Working or reliance on a promise of work that did not materialize.
- (iii) Closing of agency offices, or the failure of the agency's telephonic or electronic equipment, during scheduled hours of operation.
- (iv) Delay or interruption in the delivery of mail or the delay or interruption of information by telephonic or other means by a business or governmental agency entrusted with the delivery of mail or of messages by telephonic or other means.
- (v) Personal physical incapacity or the physical incapacity or death of a relative or ward of either the individual or the individual's spouse or of any person living in the same household as the individual claiming benefits.
- (vi) Attendance at a funeral.
- (vii) Incarceration.
- (viii) Jury duty.

The appellant was advised by this Administrative Law Judge that whenever a request for redetermination or reconsideration is received after the expiration of the 30-day protest or appeal period, good cause for reconsideration of the prior determination or redetermination must be established.

Section 54(b) provides:

(b) Any employing unit or an owner, director, officer, or agent of an employing unit, a Claimant, an employee of the unemployment agency, or any other person who makes a false statement or representation knowing it to be false, or knowingly and willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other payment under this Act or under the unemployment compensation law of any state or of the federal government, either for himself or herself or any other person, to prevent or reduce the payment of benefits to an individual entitled thereto or to avoid becoming or remaining a subject employer, or to avoid or reduce a contribution or other payment required from an employing unit under this Act or under the unemployment compensation law of any state or of the federal government, as applicable, is subject to administrative fines and is punishable as follows, notwithstanding any other penalties imposed under any other statute of this state or of the United States:

16-014572



(I) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is less than \$500.00, the unemployment agency may recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 2 times that amount. For a second or subsequent violation described in this subdivision, the unemployment agency may recover damages equal to 4 times the amount obtained.

(II) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is \$500.00 or more, the unemployment agency shall attempt to recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 4 times that amount. The unemployment agency may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the unemployment agency has not made its own determination under this subdivision, the recovery sought by the prosecutor shall include the amount described in this subdivision and shall also include 1 or more of the following penalties if the amount obtained is \$1,000.00 or more:

Section 62(b) states:

...if the unemployment agency determines that a person has intentionally made a false statement or misrepresentation or has concealed material information to obtain benefits, whether or not the person obtains benefits by or because of the intentional false statement, misrepresentation, or concealment of material information, the person shall, in addition to any other applicable interest and penalties, have his or her rights to benefits for the benefit year in which the act occurred canceled as of the date the claimant made the false statement or misrepresentation or concealed material information, and wages used to establish that benefit year shall not be used to establish another benefit year...

### FINDINGS OF FACT

The claimant became unemployed in 2008 and was unable to find work for approximately two years. This caused him great financial hardship and loss of his residence, resulting in the claimant not having a fixed address until 2012. He initially filed a claim for unemployment benefits in 2008, which he extended through 2010. The Agency issued a Determination in this case which found the claimant not ineligible for benefits. The claimant was again employed full time and received wages from February 20, 2010 to June 2010. However, the claimant was still incurring financial hardship and was in a state of depression, and he knowingly continued to certify with the Agency and collect benefits to which he was not entitled until June 22, 2010 (Exhibit 8).

16-014572



The Agency subsequently re-adjudicated the claimant's claim and issued a Redetermination on November 30, 2010. The Redetermination reversed the Determination and held the claimant ineligible for benefits under Section 48 of the Act beginning February 16, 2010 and required the claimant to pay restitution under Section 62 of the Act (Exhibit 5).<sup>8</sup> Also on November 30, 2010, the Agency issued a companion Redetermination finding the claimant committed intentional misrepresentation in violation of Section 54(b) and 62(b) of the Act (Exhibit 6). The Agency issued an accompanying restitution notice on December 1, 2010 (Exhibit 7).

The claimant never received the Agency's Redeterminations or restitution notice because he did not have a fixed address at the time. The next time the claimant became aware the Agency had found him ineligible for benefits was when his wages began to be garnished in 2014. However, he did not know the total amount the Agency was attempting to recoup and thought he could pay off the benefits he received from February to June 2010, so he did not immediately respond to the garnishment. After the garnishments continued past what the claimant believed he owed, he called the Agency in late 2015 and learned he had been assessed fraud penalties. The claimant updated his address with the Agency, but was not told he could file an appeal.

After contacting the Agency, the claimant sought assistance from an attorney who filed his appeal on January 11, 2016 (Exhibit B). The Agency then issued a Denial of Reconsideration or Redetermination, which denied the claimant's appeal because it was not filed within one year of the original Redeterminations (Exhibit C).

#### **REASONING AND CONCLUSIONS OF LAW**

The claimant bears the burden of proving he had good cause for filing his appeal more than one year after the Agency's Redetermination was originally issued. Here, the claimant offered credible, un rebutted testimony that he did not have a fixed address during the relevant time period and did not receive any correspondence from the Agency after he ceased collecting benefits in June 2010. The Agency also testified it received no return correspondence from the claimant after that time until he called them in 2014 following his garnishment, which indicates the claimant never received anything from the Agency after June 2010. Thus, the claimant is not at fault for never receiving the Agency's Redetermination, and likewise is not to blame for not appealing a decision of which he was not aware. The claimant then acted diligently upon learning he had been charged fraud penalties and required to repay four times the amount of benefits he had received. Therefore, the claimant had good cause under Section 32a(2) of the Act for filing his late appeal, and his appeal may be considered.

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<sup>8</sup> Due to the Agency updating its computer systems in October 2013, it no longer maintained the original adjudications in this case. However, it reproduced the adjudications on November 23, 2015 at the claimant's request.

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Regarding the claimant's eligibility for benefits under the not unemployed provisions of Section 48 of the Act, the claimant admitted on the record during the hearing he worked full time and earned wages during the relevant time period, and that he knew he was still wrongly collecting benefits. Therefore, the claimant is ineligible for benefits under Section 48 of the Act beginning February 16, 2010.

Lastly, in order for the claimant to be assessed fraud penalties under Sections 54(b) and 62(b) of the Act, the Agency must prove the claimant intentionally concealed or misrepresented his earnings during the relevant period. In this case, the Agency provided certification records showing the claimant reported he did not have any earnings from February through June 2010. The claimant also testified he continued certifying even after he returned to work full time, and he was relieved when the garnishments began because he could pay back the benefits he improperly received. These facts sufficiently prove the claimant intentionally failed to report he was employed from February through June 2010 in order to obtain benefits to which he was not entitled. Therefore, the claimant is required to pay fraud penalties under Sections 54(b) and 62(b) of the Act.

**IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME**

This Order will become final unless an Interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge, or by an office or agent office of the agency OR (2) files a written, signed, appeal to the Michigan Compensation Appellate Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

**August 26, 2016**

I, A. Anthony, certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

16-014572



### REQUEST FOR REHEARING OR REOPENING BEFORE AN ADMINISTRATIVE LAW JUDGE

When the appeal to the Administrative Law Judge (ALJ) has been dismissed for lack of prosecution or a party is in possession of newly discovered material information not available when the case was heard by the ALJ, the party may request rehearing in writing before the ALJ instead of appealing to the Michigan Compensation Appellate Commission (Commission). A request for rehearing must be signed by the requesting party or their agent, and RECEIVED by the Michigan Administrative Hearing System (MAHS) at 3024 W. Grand Blvd., Suite 7-450, Detroit, MI 48202 or by an office or agent office of the agency, within 30 calendar days after the date of this decision. The party requesting rehearing must also serve the request on the opposing party. A rehearing request received (as described above) more than 30 days after the decision is mailed, shall be treated as a request for reopening.

The ALJ may, for good cause, reopen and review this decision and issue a new decision or issue a denial of rehearing/reopening.

If a request for rehearing or reopening is not received by MAHS, and an appeal to the Commission is not submitted, the hearing decision becomes final.

If the Agency fails to comply with an ALJ decision or order more than 30 days, but within 1 year, after the date of mailing of the decision, you may request, in writing, that the ALJ reopen the matter. You must serve a copy of the request to reopen on the other party.

### APPEAL TO THE MICHIGAN COMPENSATION APPELLATE COMMISSION

The Michigan Compensation Appellate Commission (Commission) consists of up to nine members appointed by the governor and is not part of the Unemployment Insurance Agency (UIA).

An appeal to the Commission shall be in writing and signed by the party or his/her agent and RECEIVED directly by the COMMISSION within 30 days after the mailing of the ALJ's hearing decision or order denying rehearing or reopening. A timely appeal or request for rehearing/reopening may be made by personal service, postal delivery (P.O. Box 30475, Lansing, MI 48909-7975), facsimile transmission (517.241.7326), or other electronic means as prescribed by the Commission.

The timely appeal/request may also seek to present additional evidence in connection with the appeal or request an oral argument before the Commission. The Commission may consider written argument only if all parties are represented; by agreement of the parties; the Commission orders oral argument; or the Commission orders evidence be produced before it. For additional information, please review the Mich Admin Code, Rules 792.11416 through 792.11429 or visit <http://www.michigan.gov/lara/0,4601,7-154-35738---,00.html>.

An appeal cannot be requested by telephone, but information about the appeal process can be obtained by calling (800) 738-6372 or visiting [http://www.michigan.gov/documents/uiia\\_UC1800\\_76144\\_7.pdf](http://www.michigan.gov/documents/uiia_UC1800_76144_7.pdf).

### BY-PASS OF COMMISSION/DIRECT APPEAL TO THE CIRCUIT COURT

A party may by-pass appealing to the Commission and appeal a decision or final order of an ALJ directly to a circuit court in the county in which the Claimant resides or in the county in which the Claimant's place of employment is (or was) located, or if the Claimant is not a party to the case, the circuit court in the county in which the employer's principal place of business in this state is located, if the parties (Claimant and Employer), or their respective authorized agents/attorneys, sign a timely written stipulation agreeing to the direct appeal to the circuit court. The stipulation must be mailed to the Michigan Administrative Hearing System, 3028 W. Grand Blvd, 2nd Floor Annex, Suite 2-700, Detroit, Michigan 48202. Application for review to a circuit court must be made within 30 days after the mailing date decision or final order by any method permissible under the rules and practices of the circuit court.

The responsibility for properly and timely filing an appeal with the clerk of the circuit court rests with the party  
filing the appeal.



STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Form 1850

DANIEL A GWINN, ESQ.  
GWINN TAURIANEN  
901 WILSHIRE DRIVE, SUITE 550  
TROY, MI 48084

Docket No.: 16-014604  
Case No.: 6610595  
Employer: DART PROPERTIES II LLC  
Claimant: FRANK LUCENTE  
SSN: XXX-XX-4637

Administrative Law Judge: Michael Wakeley

**ORDER**

The Agency's January 19, 2016 Adjudication is reversed.

The claimant had good cause for his late appeal under Section 32a(2) of the Michigan Employment Security Act (Act), and his appeal to the Agency's November 30, 2010 Redetermination may be considered.

The Agency's November 30, 2010 Adjudication is affirmed. The claimant is ineligible from receiving benefits pursuant to Section 48 of the Act beginning February 16, 2010.

The claimant is required to pay fraud penalties under Section 54(b) of the Act.

It is left for the Agency to adjudicate restitution as appropriate.

Further determinations consistent with this decision are left to the Agency.

Decision Date: July 27, 2016

  
\_\_\_\_\_  
MICHAEL WAKELEY  
ADMINISTRATIVE LAW JUDGE

16-014604



### REQUEST FOR REHEARING OR REOPENING BEFORE AN ADMINISTRATIVE LAW JUDGE

When the appeal to the Administrative Law Judge (ALJ) has been dismissed for lack of prosecution or a party is in possession of newly discovered material information not available when the case was heard by the ALJ, the party may request rehearing in writing before the ALJ instead of appealing to the Michigan Compensation Appellate Commission (Commission). A request for rehearing must be signed by the requesting party or their agent, and RECEIVED by the Michigan Administrative Hearing System (MAHS) at 3024 W. Grand Blvd., Suite 7-450, Detroit, MI 48202 or by an office or agent office of the agency, within 30 calendar days after the date of this decision. The party requesting rehearing must also serve the request on the opposing party. A rehearing request received (as described above) more than 30 days after the decision is mailed, shall be treated as a request for reopening.

The ALJ may, for good cause, reopen and review this decision and issue a new decision or issue a denial of rehearing/reopening.

If a request for rehearing or reopening is not received by MAHS, and an appeal to the Commission is not submitted, the hearing decision becomes final.

If the Agency fails to comply with an ALJ decision or order more than 30 days, but within 1 year, after the date of mailing of the decision, you may request, in writing, that the ALJ reopen the matter. You must serve a copy of the request to reopen on the other party.

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An appeal to the Commission shall be in writing and signed by the party or his/her agent and RECEIVED directly by the COMMISSION within 30 days after the mailing of the ALJ's hearing decision or order denying rehearing or reopening. A timely appeal or request for rehearing/reopening may be made by personal service, postal delivery (P.O. Box 30475, Lansing, MI 48909-7975), facsimile transmission (517.241.7326), or other electronic means as prescribed by the Commission.

The timely appeal/request may also seek to present additional evidence in connection with the appeal or request an oral argument before the Commission. The Commission may consider written argument only if all parties are represented; by agreement of the parties; the Commission orders oral argument; or the Commission orders evidence be produced before it. For additional information, please review the Mich Admin Code, Rules 792.11416 through 792.11429 or visit <http://www.michigan.gov/lara/0,4601,7-154-35738--,00.html>.

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The responsibility for properly and timely filing an appeal with the clerk of the circuit court rests with the party  
filing the appeal.



## PARTICIPANTS

		07-18-18	
		Appeared	Sworn
Claimant	Frank Lucente	X	X
Representative	Laura Bradshaw Tucker, Attorney	X	
Witness			
Witness			
Witness			
Witness			
Employer			
Representative			
Witness			
Witness			
Witness			
Witness			
Witness			
Witness	Chelsea Gill, UIA Examiner	X	X

## EXHIBITS

NO	SUBMITTED BY			DOCUMENT DATED	FORM NO	DOCUMENT DESCRIPTION
	UIA	E	C			
B	X			1-11-16		Claimant Appeal (38 pg)
C	X			1-19-16		Denials of Redetermination (2 pg)
5	X			11-23-15		Notice of Redetermination – Sec. 48 (4 pg)
6	X			11-23-15		Notice of Redetermination – Sec 62(b) (3 pg)
7	X			11-23-15		Restitution (3 pg)
8	X					Certifications (18 pg)
9			X	2-24-12		Notice of Payment Due (1 pg)

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## JURISDICTION

This is a companion case to Appeal Docket Number 16-014572.

On January 29, 2016, the claimant timely appealed a January 19, 2016 Unemployment Insurance Agency (Agency) Adjudication which denied the claimant's appeal for not being received within one year of the Agency's December 1, 2010 Redetermination. The Agency's December 1, 2010 Redetermination held the claimant ineligible for benefits under Section 48 of the Michigan Employment Security Act (Act) beginning February 16, 2010. The claimant was required, under Section 62(a), to repay benefits improperly received and to pay fraud penalties under Section 54(b) of the Act.

## ISSUES

Was the appellant/claimant's appeal to the Agency's Redetermination late without good cause under Section 32a(2) of the Act?

If the appellant/claimant had good cause for his late appeal, the next issues to be addressed are: Is the claimant entitled to benefits under the "employed" provisions of Subsections 48 of the Act?

Did the claimant commit intentional misrepresentation under Subsection 54(b) of the Act?

## APPLICABLE LAW

Section 32a states:

(2) The unemployment agency may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. A reconsideration shall not be made unless the request is filed with the unemployment agency, or reconsideration is initiated by the unemployment agency with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue.

R 421.270 Good cause for reconsideration and reopening.

- (1) In determining if good cause exists under sections 32a, 33, and 34 of the act, after the 30-day protest or appeal period has expired, for reconsideration of any prior determination or redetermination or for reopening and review, good cause shall include, but not be limited to, any of the following situations:

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- (a) If an interested party has newly discovered material facts which, through no fault of the party, were not available to the party at the time of the determination, redetermination, order, or decision. However, a request for reconsideration of a determination or redetermination or for reopening a decision or order made after the expiration of the statutory 30-day period solely for the purpose of evading or avoiding such statutory period is not for good cause.
  - (b) If the agency has additional or corrected information.
  - (c) If an administrative clerical error is discovered in connection with a determination, redetermination, order, or decision.
  - (d) If an interested party has a legitimate inability to act sooner.
  - (e) If an interested party fails to receive a reasonable and timely notice, order, or decision.
  - (f) If an interested party is prevented from acting sooner due to an untimely delivery of a protest, appeal, or agency document by a business or governmental agency entrusted with delivery of mail.
  - (g) If an interested party has been misled by incorrect information from the agency, the office of appeals, or the board of review.
- (2) If, before the start of an initial hearing before the office of appeals, the agency receives new, additional, or corrected information or discovers an administrative clerical error in the claim, the matter may be returned to the agency for reconsideration and redetermination.

The appellant was advised by this Administrative Law Judge that whenever a request for redetermination or reconsideration is received after the expiration of the 30-day protest or appeal period, good cause for reconsideration of the prior determination or redetermination must be established.

Section 48 of the Act provides:

(1) An individual shall be considered unemployed for any week during which he or she performs no services and for which remuneration is not payable to the individual, or for any week of less than full-time work if the remuneration payable to the individual is less than 1-1/2 times his or her weekly benefit rate, except that for payable weeks of benefits beginning after the effective date of the amendatory act that added section 15a and before October 1, 2015, an individual is considered unemployed for any week or less of full-time work if the remuneration payable to the individual is less than 1-3/5 times his or her weekly benefit rate. However, any loss of remuneration incurred by an individual during any week resulting from any cause other than the failure of the individual's employing unit to furnish full-time, regular employment shall be included as remuneration earned for purposes of this section and section 27(c). The total amount of remuneration lost shall be determined pursuant to regulations prescribed by the unemployment agency. For the purposes of this act, an individual's weekly benefit rate means the weekly benefit rate determined pursuant to section 27(b).

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(2) All amounts paid to a claimant by an employing unit or former employing unit for a vacation or a holiday, and amounts paid in the form of retroactive pay, pay in lieu of notice, severance payments, salary continuation, or other remuneration intended by the employing unit as continuing wages or other monetary consideration as the result of the separation, excluding SUB payments as described in section 44, shall be considered remuneration in determining whether an individual is unemployed under this section and also in determining his or her benefit payments under section 27(c), for the period designated by the contract or agreement providing for the payment, or if there is no contractual specification of the period to which payments shall be allocated, then for the period designated by the employing unit or former employing unit. However, payments for a vacation or holiday, or the right to which has irrevocably vested, after 14 days following a vacation or holiday shall not be considered wages or remuneration within the meaning of this section.

(3) An individual shall not be considered to be unemployed during any leave of absence from work granted by an employer either at the request of the individual or pursuant to an agreement with the individual's duly authorized bargaining agent, or in accordance with law. An individual shall neither be considered not unemployed nor on a leave of absence solely because the individual elects to be laid off, pursuant to an option provided under a collective bargaining agreement or written employer plan that permits an election, if there is a temporary layoff because of lack of work and the employer has consented to the election.

The burden is on the Claimant to prove their eligibility. *Dwyer v Unemployment Compensation Agency*, 321 Mich 178 (1948).

Compensation earned, not compensation received, is the test of remuneration. *Phillips v Unemployment Compensation Agency*, 323 Mich 188 (1948).

Section 54(b) provides:

Any employing unit or an owner, director, officer, or agent of an employing unit, a claimant, an employee of the unemployment agency, or any other person who makes a false statement or representation knowing it to be false, or knowingly and willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other payment under this act or under the unemployment compensation law of any state or of the federal government, either for himself or herself or any other person, to prevent or reduce the payment of benefits to an individual entitled thereto or to avoid becoming or remaining a subject employer, or to avoid or reduce a contribution or other payment required from an employing unit under this act or under the unemployment compensation law of any state or of the federal government, as applicable, is subject to administrative fines and is punishable as follows, notwithstanding any other penalties imposed under any other statute of this state or of the United States:

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(i) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is less than \$500.00, the unemployment agency may recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 2 times that amount. For a second or subsequent violation described in this subdivision, the unemployment agency may recover damages equal to 4 times the amount obtained.

(ii) If the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is \$500.00 or more, the unemployment agency shall attempt to recover the amount obtained as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact and may also recover damages equal to 4 times that amount. The unemployment agency may refer the matter to the prosecuting attorney of the county in which the alleged violation occurred for prosecution. If the unemployment agency has not made its own determination under this subdivision, the recovery sought by the prosecutor shall include the amount described in this subdivision and shall also include 1 or more of the following penalties if the amount obtained is \$1,000.00 or more:

(A) Subject to redesignation under subsection (i), if the amount obtained or withheld from payment as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is \$1,000.00 or more but less than \$25,000.00, then 1 of the following:

(I) Imprisonment for not more than 1 year.

(II) The performance of community service of not more than 1 year but not to exceed 2,080 hours.

(III) A combination of (I) and (II) that does not exceed 1 year.

(B) If the amount obtained or withheld from payment as a result of the knowing false statement or representation or the knowing and willful failure to disclose a material fact is \$25,000.00 or more, then 1 of the following:

(I) Imprisonment for not more than 2 years.

(II) The performance of community service of not more than 2 years but not to exceed 4,160 hours.

(III) A combination of (I) and (II) that does not exceed 2 years.

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(C) If the knowing false statement or representation or the knowing and willful failure to disclose a material fact made to obtain or withhold an amount from payment does not result in a loss to the commission, then a recovery shall be sought equal to 3 times the amount that would have been obtained by the knowing false statement or representation or the knowing and willful failure to disclose a material fact, but not less than \$1,000.00, and 1 of the following:

(I) Imprisonment for not more than 2 years.

(II) The performance of community service of not more than 2 years but not to exceed 4,160 hours.

(III) A combination of (I) and (II) that does not exceed 2 years.

The recovery of improperly paid benefits is set forth in Section 62(b):

For benefit years beginning on or after October 1, 2000, if the unemployment agency determines that a person has intentionally made a false statement or misrepresentation or has concealed material information to obtain benefits, whether or not the person obtains benefits by or because of the intentional false statement, misrepresentation, or concealment of material information, the person shall, in addition to any other applicable interest and penalties, have his or her rights to benefits for the benefit year in which the act occurred canceled as of the date the claimant made the false statement or misrepresentation or concealed material information, and wages used to establish that benefit year shall not be used to establish another benefit year. A chargeable employer may protest a claim filed after October 1, 2014 to establish a successive benefit year under Section 46(c), if there was a determination by the unemployment agency or decision of a court or administrative tribunal finding that the claimant made a false statement, made a misrepresentation, or concealed material information related to his or her report of earnings for a preceding benefit year claim. If a protest is made, any unreported earnings from the preceding benefit year that were falsely stated, misrepresented, or concealed shall not be used to establish a benefit year for a successive claim. Before receiving benefits in a benefit year established within 4 years after cancellation of rights to benefits under this subsection, the individual, in addition to making the restitution of benefits established under subsection (a), may be liable for an additional amount as otherwise determined by the unemployment agency under this Act, which may be paid by cash, deduction from benefits, or deduction from a tax refund. The individual is liable for any fee the federal government imposes with respect to instituting a deduction from a federal tax refund. Restitution resulting from the intentional false statement, misrepresentation, or concealment of material information is not subject to the 50% limitation provided in subsection (a)

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### FINDINGS OF FACT

The claimant became unemployed in 2008 and was unable to find work for approximately two years. This caused him great financial hardship and loss of his residence, resulting in the claimant not having a fixed address until 2012. He initially filed a claim for unemployment benefits in 2008, which he extended through 2010. The Agency issued a Determination in this case which found the claimant not ineligible for benefits. The claimant was again employed full time and received wages from February 20, 2010 to June 2010. However, the claimant was still incurring financial hardship and was in a state of depression, and he knowingly continued to certify with the Agency and collect benefits to which he was not entitled until June 22, 2010 (Exhibit 8).

The Agency subsequently re-adjudicated the claimant's claim and issued a Redetermination on November 30, 2010. The Redetermination reversed the Determination and held the claimant ineligible for benefits under Section 48 of the Act beginning February 16, 2010 and required the claimant to pay restitution under Section 62 of the Act (Exhibit 5).<sup>4</sup> Also on November 30, 2010, the Agency issued a companion Redetermination finding the claimant committed intentional misrepresentation in violation of Section 54(b) and 62(b) of the Act (Exhibit 6). The Agency issued an accompanying restitution notice on December 1, 2010 (Exhibit 7).

The claimant never received the Agency's Redeterminations or restitution notice because he did not have a fixed address at the time. The next time the claimant became aware the Agency had found him ineligible for benefits was when his wages began to be garnished in 2014. However, he did not know the total amount the Agency was attempting to recoup and thought he could pay off the benefits he received from February to June 2010, so he did not immediately respond to the garnishment. After the garnishments continued past what the claimant believed he owed, he called the Agency in late 2015 and learned he had been assessed fraud penalties. The claimant updated his address with the Agency, but was not told he could file an appeal.

After contacting the Agency, the claimant sought assistance from an attorney who filed his appeal on January 11, 2016 (Exhibit B). The Agency then issued a Denial of Reconsideration or Redetermination, which denied the claimant's appeal because it was not filed within one year of the original Redeterminations (Exhibit C).

### REASONING AND CONCLUSIONS OF LAW

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<sup>4</sup> Due to the Agency updating its computer systems in October 2013, it no longer maintained the original adjudications in this case. However, it reproduced the adjudications on November 23, 2015 at the claimant's request.

16-014604



The claimant bears the burden of proving he had good cause for filing his appeal more than one year after the Agency's Redetermination was originally issued. Here, the claimant offered credible, un rebutted testimony that he did not have a fixed address during the relevant time period and did not receive any correspondence from the Agency after he ceased collecting benefits in June 2010. The Agency also testified it received no return correspondence from the claimant after that time until he called them in 2014 following his garnishment, which indicates the claimant never received anything from the Agency after June 2010. Thus, the claimant is not at fault for never receiving the Agency's Redetermination, and likewise is not to blame for not appealing a decision of which he was not aware. The claimant then acted diligently upon learning he had been charged fraud penalties and required to repay four times the amount of benefits he had received. Therefore, the claimant had good cause under Section 32a(2) of the Act for filing his late appeal, and his appeal may be considered.

Regarding the claimant's eligibility for benefits under the not unemployed provisions of Section 48 of the Act, the claimant admitted on the record during the hearing he worked full time and earned wages during the relevant time period, and that he knew he was still wrongly collecting benefits. Therefore, the claimant is ineligible for benefits under Section 48 of the Act beginning February 16, 2010.

Lastly, in order for the claimant to be assessed fraud penalties under Sections 54(b) and 62(b) of the Act, the Agency must prove the claimant intentionally concealed or misrepresented his earnings during the relevant period. In this case, the Agency provided certification records showing the claimant reported he did not have any earnings from February through June 2010. The claimant also testified he continued certifying even after he returned to work full time, and he was relieved when the garnishments began because he could pay back the benefits he improperly received. These facts sufficiently prove the claimant intentionally failed to report he was employed from February through June 2010 in order to obtain benefits to which he was not entitled. Therefore, the claimant is required to pay fraud penalties under Sections 54(b) and 62(b) of the Act. (The assessment of penalties due to fraud is reviewed under Appeal Docket Number 16-014572-UA).

**IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME**

16-014604



This Order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge, or by an office or agent office of the agency OR (2) files a written, signed, appeal to the Michigan Compensation Appellate Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

August 26, 2016

I, A. Anthony, certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

16-014604

## EXHIBIT 2





FRANK LUCENTE  
17371 KINGSBROOKE CIR APT 102  
CLINTON TOWNSHIP MI 48038-3758

Mail Date: November 23, 2016  
Letter ID: L0024868627  
MiN: 0337484032  
Name: FRANK LUCENTE

**Non-Protestable Summary of Previously (Re) Determined Restitution**  
(List of Overpayments)

SSN: ###-##-4637 BYB: July 27, 2008  
Claimant: FRANK LUCENTE Employer Number: 1562346 000  
Original Mail Date: December 01, 2010 Employer Name: DART PROPERTIES II LLC

Should your disqualification or ineligibility be reversed, restitution shall cease if you are not otherwise disqualified or ineligible for unemployment benefits.

Week Ending	Principal	Program	Total
20-Feb-2010	\$362.00	EUC3	\$362.00
20-Feb-2010	\$25.00	FAC	\$25.00
27-Feb-2010	\$362.00	EUC3	\$362.00
27-Feb-2010	\$25.00	FAC	\$25.00
06-Mar-2010	\$362.00	EUC3	\$362.00
06-Mar-2010	\$25.00	FAC	\$25.00
13-Mar-2010	\$362.00	EUC3	\$362.00
13-Mar-2010	\$25.00	FAC	\$25.00
20-Mar-2010	\$362.00	EUC3	\$362.00
20-Mar-2010	\$25.00	FAC	\$25.00
27-Mar-2010	\$362.00	EUC3	\$362.00
27-Mar-2010	\$25.00	FAC	\$25.00
03-Apr-2010	\$362.00	EUC3	\$362.00
03-Apr-2010	\$25.00	FAC	\$25.00
10-Apr-2010	\$362.00	EUC3	\$362.00
10-Apr-2010	\$25.00	FAC	\$25.00
17-Apr-2010	\$362.00	EUC3	\$362.00
17-Apr-2010	\$25.00	FAC	\$25.00
24-Apr-2010	\$362.00	EUC3	\$362.00
24-Apr-2010	\$25.00	FAC	\$25.00

Week Ending	Principal	Program	Total
01-May-2010	\$362.00	EUC3	\$362.00
01-May-2010	\$25.00	FAC	\$25.00
08-May-2010	\$362.00	EUC3	\$362.00
08-May-2010	\$25.00	FAC	\$25.00
15-May-2010	\$25.00	FAC	\$25.00
22-May-2010	\$25.00	FAC	\$25.00
29-May-2010	\$25.00	FAC	\$25.00
05-Jun-2010	\$25.00	FAC	\$25.00
12-Jun-2010	\$25.00	FAC	\$25.00
19-Jun-2010	\$25.00	FAC	\$25.00
	<u>\$4,794.00</u>		<u>\$4,794.00</u>
Penalty	\$18,276.00		<u>\$18,276.00</u>
			<u>\$23,070.00</u>

Claimant must pay to the Agency in cash, by check, money order, EFT via MiWAM or deduction from benefits, restitution as noted above under MES Act, Section 62(a).

Reason for overpayment does not come within the criteria for waiver. If you are unable to repay the balance owed due to indigency, you may request, or reapply for, a waiver due to your financial status at any time via fax at (517) 636-0427, mail at UIA, PO Box 169, Grand Rapids MI 49501-0169, or your MiWAM account.

Repayment arrangements should be made with the Benefit Overpayment Collection (BOC) Unit. For information on repayment or repayment arrangements, contact BOC at 1-800-638-6372 from 9:00 a.m. to 3:00 p.m. Eastern Time Monday through Friday. Checks or money orders must be made payable to the "State of Michigan for UIA." Submit the check or money order with the payment voucher that will be attached to the monthly statement. The address is: State of Michigan, Unemployment Insurance Agency - Restitution, Dept #771760, PO Box 77000 Detroit, MI 48277-1760. DO NOT SEND CASH. You may also make restitution payments through your MiWAM account by setting up electronic funds transfer (EFT) payments.



This is a summary of a previously-mailed (re)determination for which there were protest/appeal rights and is being provided for informational purposes only.

This document is not subject to protest/appeal.

**AGENCY STATEMENT OF REPRODUCTION OF CONTENT OF ORIGINAL (RE)DETERMINATIONS AND RECONSIDERATIONS**

Effective October 1, 2013, the Unemployment Insurance Agency (Agency) converted from its old main frame system, known as 3270, to a new computer based system known as MIDAS (Michigan Integrated Data Automated System).

With the implementation of the new system, the Agency no longer has access to and is unable to reprint actual copies of certain determinations, redeterminations and reconsiderations involving claims for benefits that were originally generated in 3270. However, the exact information, including original mail date printed on the determination, redetermination, and reconsideration, used to generate the document was converted in the new system. Because that original information is stored in the system, for purposes of a hearing resulting from an appeal and/or collection purposes, the Agency is able to recreate a determination, redetermination or reconsideration duplicating the exact information, including original mail date shown on the original document.

For purposes of hearings on appeals and collections, where the original determination, redetermination or reconsideration was issued prior to October 1, 2013, the Agency certifies that the recreated document generated in MIDAS is a true and accurate reproduction of the original document upon which the protest or appeal was filed or which had become final.

## EXHIBIT 3



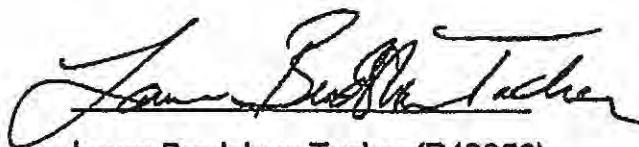
RE: FRANK LUCENTE, Claimant  
 MAHS Case Nos.: 6281815, 6610595  
 SS: XXX-XX-4637

### AFFIDAVIT OF LAURA BRADSHAW TUCKER

Laura Bradshaw Tucker, being first sworn, deposes and states as follows:

On or about August 18, 2016 I spoke with the Unemployment Insurance Agency representative in the above case about the penalty imposed. The Representative informed me the Agency had no discretion in whether to impose the quadruple penalty. She stated that UIA regulations mandated the imposition of the quadruple penalty in all cases in which benefits of more than \$500 were obtained through misrepresentation.

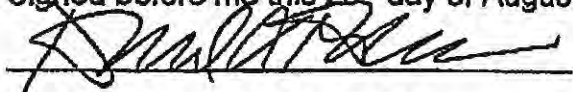
On August 19, 2016 I sent the representative an e-mail requesting the citation for the regulation that mandated uniform imposition of the maximum penalty in all cases. I did not receive a response to my query.



Laura Bradshaw Tucker (P42652)

Dated: August 26, 2016

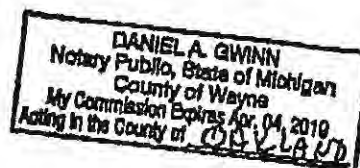
Signed before me this 26<sup>th</sup> day of August, 2016.



Daniel A. Gwinn, Notary Public

County of Wayne, Michigan

My commission expires: 04/04/2019  
 Acting in Oakland County, MI



## EXHIBIT 4





Mail Date: August 23, 2016  
Letter ID: L0031498348  
CLM: C3368086-4  
Name: FRANK LUCENTE

DANIEL A GWINN, ESQ.  
901 WILSHIRE DRIVE, SUITE 550  
TROY 48064-8084

### Restitution (List of Overpayments)

Case Number 0-008-610-596 BYB: July 27, 2008  
SSN: ###-##-4637 Employer Number: 1562348-000  
Claimant FRANK LUCENTE Involved Employer: DART PROPERTIES II LLC

Should your disqualification or ineligibility be reversed, restitution shall cease if you are not otherwise disqualified or ineligible for unemployment benefits. Any restitution resulting from the issue(s) addressed in this (re)determination does not affect any restitution that you may owe for the same weeks on a different (re)determination or decisions.

Calculation of interest and penalty amount is shown later on this form.

Week Ending	Principal	Penalty	Total
20-Feb-2010	\$387.00	\$1,548.00	\$1,935.00
27-Feb-2010	\$387.00	\$1,548.00	\$1,935.00
06-Mar-2010	\$387.00	\$1,548.00	\$1,935.00
13-Mar-2010	\$387.00	\$1,548.00	\$1,935.00
20-Mar-2010	\$387.00	\$1,548.00	\$1,935.00
27-Mar-2010	\$387.00	\$1,548.00	\$1,935.00
03-Apr-2010	\$387.00	\$1,548.00	\$1,935.00
10-Apr-2010	\$387.00	\$1,548.00	\$1,935.00
17-Apr-2010	\$387.00	\$1,548.00	\$1,935.00
24-Apr-2010	\$387.00	\$1,548.00	\$1,935.00
01-May-2010	\$387.00	\$1,548.00	\$1,935.00
08-May-2010	\$387.00	\$1,248.00	\$1,835.00
15-May-2010	\$387.00	\$1,448.00	\$1,835.00
22-May-2010	\$387.00	\$1,448.00	\$1,835.00
29-May-2010	\$387.00	\$1,448.00	\$1,835.00
05-Jun-2010	\$387.00	\$1,448.00	\$1,835.00

Week Ending	Principal	Penalty	Total
12-Jun-2010	\$387.00	\$1,448.00	\$1,835.00
19-Jun-2010	\$387.00	\$1,448.00	\$1,835.00
	<u>\$6,968.00</u>	<u>\$28,964.00</u>	<u>\$33,930.00</u>

Claimant must pay to the Agency in cash, by check, money order, EFT via MIWAM or deduction from benefits, restitution in the amount of \$33,930.00 under MES Act, Section 82(a) as itemized above.

Reason for overpayment does not come within the criteria for waiver. If you are unable to repay the balance owed due to indigency, you may request, or reapply for, a waiver due to your financial status at any time via fax at (517) 838-0427, mail at UIA, PO Box 188, Grand Rapids MI 49501-0188, or your MIWAM account.

Repayment arrangements should be made with the Benefit Overpayment Collection (BOC) Unit. For information on repayment or repayment arrangements, contact BOC at 1-800-638-6372 from 9:00 a.m. to 3:00 p.m. Eastern Time Monday through Friday. Checks or money orders must be made payable to the "State of Michigan for UIA." Submit the check or money order with the payment voucher that will be attached to the monthly statement. The address is: State of Michigan, Unemployment Insurance Agency - Restitution, Dept #771760, PO Box 77000 Detroit, MI 48277-1760. DO NOT SEND CASH. You may also make restitution payments through your MIWAM account by setting up electronic funds transfer (EFT) payments.

**INTEREST:** Interest accrues at the rate of 1% per month (computed on a daily basis), Section 15(a) of the MES Act.

**PENALTIES:** If it is determined that you intentionally made a false statement, misrepresented the facts or concealed material information to obtain benefits, then the penalty provisions of Sections 54 and 82(b) of the Michigan Employment Security Act will be applied and you will be subject to any or all of the following: You would have to repay money received and pay a penalty of two times (if less than \$500 of improper payments) or four times (if \$500 or more of improper payments) the amount of benefits fraudulently received. The two times penalty would be increased to a penalty of 4 times the amount of improper payments if it were a second or subsequent offense. Your benefits will be stopped and you will lose remaining benefits. You will be required to pay court costs (if prosecuted) and fines, face jail time, or you may be required to perform community service, or all of these. Intentional misrepresentation to obtain benefits in excess of \$3,500 is a felony and you may be prosecuted in criminal court.

RECEIVED by MSC 9/9/2020 8:16:51 PM



### Appeal Rights

Any appeal must be filed by mail, fax or web account and received within 30 calendar days from the date this notice was issued on the front side of form. If the 30th day is a Saturday, Sunday, legal holiday, or Agency non-work day, the appeal must be received by the Unemployment Insurance Agency (UIA) by the end of the next day which is neither a Saturday, Sunday, legal holiday, nor Agency non-work day. If an appeal is not received within 30 days, a decision will become final and resiliation may be due and owing.

#### APPEAL TO THE MICHIGAN COMPENSATION APPELLATE COMMISSION

The Michigan Compensation Appellate Commission (Commission) consists of up to nine members appointed by the governor and is not part of the Unemployment Insurance Agency (UIA).

An appeal to the Commission shall be in writing and signed by the party or his/her agent and RECEIVED directly by the COMMISSION within 30 days after the mailing of the ALJ's hearing decision or order denying rehearing or reopening. A timely appeal or request for rehearing/reopening may be made by personal service, postal delivery (P.O. Box 30475, Lansing, MI 48909-7975), facsimile transmission (517.241.7328), or by other electronic means as prescribed by the Commission.

The timely appeal/request may also seek to present additional evidence in connection with the appeal or request an oral argument before the Commission. The Commission may consider written argument only if all parties are represented; by agreement of the parties; the Commission orders oral argument; or the Commission orders evidence be produced before it. For additional information, please review the Mich Admin Code, Rules 792.11416 through 792.11429 or visit <http://www.michigan.gov/lara/0,4801,7-154-35738---,00.html>.

An appeal cannot be requested by telephone, but information about the appeal process can be obtained by calling (800) 738-6372 or visiting [http://www.michigan.gov/documents/uiu\\_UC1800\\_76144\\_7.pdf?2014112410325](http://www.michigan.gov/documents/uiu_UC1800_76144_7.pdf?2014112410325).

**TO THE CLAIMANT:** If you appeal, protect your rights by continuing to certify for benefits. Report using MARVIN, either by telephone or via the Internet at [www.michigan.gov/uiu](http://www.michigan.gov/uiu), and click on either heading, "UIA Online Services for Claimants", or "Certify With MARVIN Online" pending the decision on your appeal. If you go back to work, report this fact when you certify.

In accordance with the provisions of the Michigan Employment Security Act, benefits (re)determined payable in accordance with this (re)determination will be paid, even though a protest may be filed at a later date. However, if a later redetermination or decision holds that you were not entitled to receive all or part of these benefits, you will be required to repay the benefits improperly received.

If you have any questions, call the UIA at 1-866-500-0017 (TTY callers use 1-866-368-0004).

## EXHIBIT 5





LAWYER LOGIN

## IN RE ANDREWS

Case No. 15-46058, Adversary Proceeding Case No. 15-04724.

Email | Print | Comments (0)

*In re: Priscilla Annette Andrews, Chapter 13, Debtor. Michigan Unemployment Insurance Agency, Plaintiff, v. Priscilla Annette Andrews, Defendant.*

United States Bankruptcy Court, E.D. Michigan, Southern Division.

October 2, 2015.

View Case

Cited Cases

Citing Case

Attorney(s) appearing for the Case

Michigan Unemployment Insurance Agency, Plaintiff, represented by Zachary A. Risk.

Priscilla Annette Andrews, Defendant, represented by Brian Ashley Rookard, Gudeman &amp; Associates, P.C.

### ORDER CONDITIONALLY GRANTING DEFENDANT'S MOTION TO DISMISS

MARK A. RANDON, Bankruptcy Judge.

#### I. INTRODUCTION

The Michigan Unemployment Insurance Agency ("the Agency") determined that Priscilla Andrews was overpaid \$6,897.00 in unemployment benefits because she intentionally failed to report wages from two jobs. After a quadruple-damage statutory penalty and interest were added, the Agency demanded payment of more than \$34,000.00; Andrews filed Chapter 13 bankruptcy.

The Agency has filed an adversary complaint to determine the dischargeability of the overpayment, penalty, and interest. Andrews' motion to dismiss the penalty portion of the complaint is pending.

A debtor who successfully completes a Chapter 13 bankruptcy receives a broader discharge of debts than she would under Chapter 7. Among the debts dischargeable under Chapter 13, but not Chapter 7, are penalties payable to and for the benefit of a governmental unit. Andrews says the quadruple-damage penalty is, therefore, dischargeable; the Agency claims that under 11 U.S.C. § 523(a)(2)(A), the entire debt, including the penalty, is nondischargeable—if it arises from fraud. Because the Court finds that—in Chapter 13—Congress intended to exclude section 523(a)(7) penalties from "any debt" obtained by fraud under section 523(a)(2)(A), Andrews' motion is **CONDITIONALLY GRANTED**.<sup>1</sup> The quadruple-damage penalty is dischargeable.

#### II. BACKGROUND

Andrews did not report earnings from two jobs while receiving unemployment benefits. This resulted in an overpayment. After the Agency discovered Andrews' employment income, it demanded \$6,897.00 in restitution, and a statutory penalty of \$27,588.00.<sup>2</sup> With the goal of discharging the penalty and reorganizing her other debts, Andrews filed Chapter 13 bankruptcy on April 17, 2015.



## III. STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7012, provides for the dismissal of a case where the complaint fails to state a claim upon which relief can be granted. When reviewing a motion to dismiss under Rule 12(b)(6), a court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *DirectTV, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007). But the court "need not accept as true legal conclusions or unwarranted factual inferences." *Id.* (quoting *Gregory v. Shelby County*, 220 F.3d 433, 446 (6th Cir. 2000)). "[L]egal conclusions masquerading as factual allegations will not suffice." *Eldson v. State of Tenn. Dep't of Children's Services*, 510 F.3d 631, 634 (6th Cir. 2007). Dismissal is appropriate if the plaintiff failed to offer sufficient factual allegations that make the asserted claim plausible on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

## IV. ANALYSIS

"[I]n a Chapter 13 proceeding, a debtor commits to repayment of a portion of his or her financial obligations over a specified period of time (generally three to five years) in exchange for retaining non-exempt assets and receiving a broader discharge of debt than is available under Chapter 7." *Schultz v. United States*, 529 F.3d 343, 346 (6th Cir. 2008). The question before the Court is: for Chapter 13 debtors, is an otherwise dischargeable section 523(a)(7) penalty nondischargeable if the debt also arises from fraud under section 523(a)(2)(A)? The Court answers "no."

## A. The Meaning of Section 523(a)(7)

In 2005, Congress significantly narrowed the so-called Chapter 13 "super discharge": It revised 11 U.S.C. § 1328(a)(2) to provide that any debt "of the kind specified . . . in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a)" is nondischargeable. Importantly, Congress omitted section 523(a)(7) debts from the list.

Section 523(a) lists 19 types of debt that are "not discharged" under specific provisions of the Bankruptcy Code.<sup>3</sup> Subsection (7) addresses any debt for a "penalty . . . payable to and for the benefit of a governmental unit, and [] not compensation for actual pecuniary loss[.]" In *McKay v. United States*, the Ninth Circuit cogently explained section 523(a)(7)'s meaning:

Carefully parsed, the section initially makes nondischargeable a debt that is for a fine, penalty or forfeiture payable to and for the benefit of a governmental unit. Withdrawn from this class, however, are any such fines, penalties, or forfeitures that are compensation for actual pecuniary loss. These are dischargeable. The double negative, does not discharge and not compensation for actual pecuniary loss, accomplishes this end.

*McKay v. United States*, 957 F.2d 689, 693 (9th Cir. 1992).

## B. The Significance of a Debt Omitted from Section 1328(a)

Penalty debts are nondischargeable under Chapter 7. 11 U.S.C. § 523(a). But, by omitting penalty debts from section 1328(a)(2), Congress intended that they remain dischargeable under Chapter 13—a vestige of the super discharge. On this issue, *Pennsylvania Dep't of Public Welfare v. Davenport*, 495 U.S. 552 (1990), superseded by statute on other grounds, is instructive.

In *Davenport*, the debtor (Davenport) pleaded guilty to welfare fraud, and as a condition of her probation, was ordered to make monthly restitution payments. Before completing her payments, Davenport and her husband filed Chapter 13 bankruptcy and listed the restitution obligation as an unsecured debt payable to the Pennsylvania Department of Public Welfare. *Id.* at 556. After Davenport stopped making restitution payments, the probation department initiated a violation proceeding. In response, the Davenports filed an adversary proceeding to have the Bankruptcy Court determine the dischargeability of the restitution obligation. *Id.*

The Bankruptcy Court ruled that the restitution was dischargeable in a Chapter 13. On appeal, and relying heavily on *Kelly v. Robinson*, 479 U.S. 36 (1986), the District Court reversed. The Third Circuit reversed the District Court, and the Pennsylvania Department of Public Welfare appealed to the United States Supreme Court.

In *Kelly*, the United States Supreme Court held that "restitution obligations imposed as conditions of probation in state criminal actions are nondischargeable in proceedings under Chapter 7 of the Bankruptcy Code," because they fall within the ambit of a fine, penalty or forfeiture under section 523(a)(7). *Davenport*, 495 U.S. at 555 (emphasis added). But Davenport filed Chapter 13 bankruptcy. Recognizing, as here, that Congress chose to omit section 523(a)(7) from the list of nondischargeable debts in Chapter 13, the Supreme Court affirmed the Third Circuit's decision:

In *Kelly*, the Court examined pre-Code practice and identified a general reluctance to interpret federal bankruptcy statutes to remit state criminal judgments. This pre-Code practice informed the Court's conclusion that § 523(a)(7) broadly applies to all penal sanctions, including criminal fines. Here, on the other hand, the statutory language plainly reveals Congress' intent not to except restitution orders from discharge in certain Chapter 13 proceedings. This intent is clear from Congress' decision to limit







under § 523(a)(7) as penalties payable to a governmental unit").

## V. CONCLUSION

The Court CONDITIONALLY GRANTS Andrews' motion to dismiss; the penalty assessed by the Agency may be discharged if Andrews: (1) does not receive a hardship discharge; and (2) completes all of her plan payments.

IT IS ORDERED.

## FootNotes

1. Andrews' motion is conditionally granted because she must complete her plan payments to receive a discharge. If Andrews receives a hardship discharge, the penalty is nondischargeable. 11 U.S.C. § 1328(b).

2. MICH. COMP. LAWS § 421.54(b)(11).

3. The Court prefers the clarity of the term "nondischargeable" over "not discharged" or the most confusing terms: "excepted from discharge" and "not subject to discharge." "Not discharged" is used here, to be consistent with the explanatory block quote that follows it.

4. The Agency also makes this argument against the backdrop that exceptions to discharge are to be strictly construed against creditors. *Rembert v. AT&T, Universal Card Services, Inc. (In re Rembert)*, 141 F.3d 277, 281 (6th Cir. 1998).

5. Another possible reconciliation would be to find that, while section 523(a)(7) penalties are generally dischargeable in Chapter 13, those obtained by fraud are nondischargeable under section 523(a)(2)(A). The Court initially found this reconciliation persuasive. However, absent clear evidence that Congress intended to so limit the dischargeability of penalty debts in Chapter 13, the Court will not read such language into the statute.

6. The opposite is true in Chapter 13: the penalty debt is dischargeable; only the restitution is nondischargeable under section 523(a)(2)(A).

## Comment

Your Name

Your Email

Comments

Submit

1000 Characters Remaining

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## Featured Lawyers



Mary Connor Ford  
Bond, Botes, Shinn & Donaldson, P.C.  
Montgomery  
Alabama



## EXHIBIT 6

UIA 1083  
(Rev. 04/12)

State of Michigan  
Department of Licensing and Regulatory Affairs  
UNEMPLOYMENT INSURANCE AGENCY  
[www.michigan.gov/lra](http://www.michigan.gov/lra)

Authorized by  
MCL 421.1 et seq.

FRANK LUCENTE  
PO BOX 3083  
CENTER LINE, MI 48015-0083

Statement Date :  
SSN :

05/24/2012  
[REDACTED] 4637

## FINAL NOTICE OF PAYMENT DUE

Current Overpayment Balance:	\$6,966.00
Interest Balance as of 05/24/2012:	\$0.00
Current Penalty Balance:	\$26,964.00
Minimum Monthly Payment Due:	\$375.00

You failed to pay the minimum monthly payment due last month. The current overpayment balance, current interest balance, and current penalty balance (if applicable) are now due. The minimum monthly payment shown above is due immediately. Failure to pay the above balances in full will result in collection action against you. This action may include, but is not limited to, legal enforcement through the Office of the Attorney General and wage garnishment. Interest will be charged on any unpaid balance at a rate of 1.0% per month, computed on a day-to-day basis. Since interest accrues daily, contact the Benefit Overpayment Collection Unit at the telephone number shown below for your current balance.

Your Michigan State Income Tax Refund, as provided by MCL § 421.62(a), will be intercepted by the UIA and used as payment toward the amount you owe if payment in full is not made on your account. Your Federal Income Tax Refund, as provided by 26 U.S.C. 6402(f), will be intercepted by the UIA for overpayment of unemployment benefits due to intentional misrepresentation or unreported earnings if payment in full is not made on your account. The current overpayment, interest, and penalty balances must be paid in full to avoid having the UIA intercept your tax refund(s). Paying the minimum monthly payment will not stop your income tax refund(s) from being intercepted by the UIA. In addition, if you are currently receiving unemployment benefits and overpayment deductions are being withheld from your payments by the UIA, your income tax refund(s) will still be intercepted by the UIA to pay off your balance(s).

Please detach and use the payment coupon below to mail a payment. Do not send cash. Make your check or money order payable to: State of Michigan for UIA. Write your social security number on your check or money order so your restitution account will be properly credited. Mail payment or direct questions regarding this notice to:



BENEFIT OVERPAYMENT COLLECTION UNIT

P.O. BOX 9045

DETROIT, MI 48202-9045

Telephone: 1-800-638-6372 (TTY customers use 1-866-366-0004)  
from 9:00 AM to 3:30 PM Eastern Time



UNEMPLOYMENT INSURANCE AGENCY  
BENEFIT OVERPAYMENT COLLECTION UNIT

*Prefer to pay on line?*

*At [www.michigan.gov/lra](http://www.michigan.gov/lra), click on Online Services*

### PAYMENT COUPON

SSN: [REDACTED] 4637  
Name: FRANK LUCENTE  
Statement Date: 05/24/2012  
Records Office: 023

WRITE AMOUNT ENCLOSED HERE

DOLLARS	CENTS

If your address has changed, check here ☐ and provide new address:

Address: \_\_\_\_\_

City/State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Received Time—Aug. 26, —2016— 1:14PM—No. 7199—

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# GWINN TAURIAINEN PLLC

Attorneys and Counselors at Law

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Kari L. Tauriainen  
kari@gwinntauriainenlaw.com

Laura Bradshaw Tucker  
laura@gwinntauriainenlaw.com

## FACSIMILE TRANSMITTAL

TO: Michigan Compensation Appellate Commission FAX NO: 517 241 7326

FROM: L. Bradshaw Tucker, Gwinn Tauriainen PLLC DATE: 8-26-2016

PAGES: 44 Plus Cover

### MESSAGE:

Appeal of MATS decision, VIA restitution  
Claimant Frank Laente

MICHIGAN COMPENSATION  
APPELLATE COMMISSION

AUG 26 2016

FILED: msf

\*\*\*\*\*  
THIS MATERIAL IS INTENDED FOR THE INDIVIDUAL OR ENTITY TO WHICH IT IS  
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By Fax to: (517) 241-7326

**MICHIGAN COMPENSATION APPELLATE COMMISSION**

FRANK LUCENTE, Claimant

Claimant SS# [REDACTED]

Appeal Docket No: 16-014572-250597W w/250598W

Date of Referee Decision: 07/27/2016

Referee: Michael Wakeley

Employer: Dart Properties II, LLC

MICHIGAN COMPENSATION  
APPELLATE COMMISSION

OCT 12 2016

FILED: \_\_\_\_\_ *mrf*

**APPLICATION FOR ORAL ARGUMENT**

Claimant FRANK LUCENTE, through his attorney LAURA BRADSHAW TUCKER of GWINN TAURIANEN, PLLC, asks this Commission to grant Oral Argument in the within matter. In support of this request, Claimant states as follows:

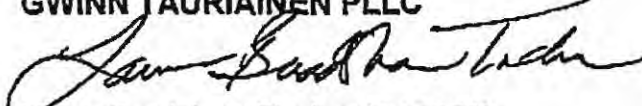
- I. The resolution of the issue presented will impact the manner in which the UIA imposes penalties on all Claimants found to have made a misrepresentation under MCL 421.54(b)(I) and (II).
- II. The issue presented involves a claim that the Unemployment Insurance Agency routinely exceeds the authority granted it under its enabling statute, the Michigan Employment Security Act, and specifically MCL 421.54(b), where its mandatory imposition of a quadruple penalty on all Claimants found to have received unemployment benefits in excess of \$500 through a misrepresentation is at in violation of plain language of the statute which makes imposition of such penalty permissive.
- III. The Administrative Law Judge in this case failed to exercise his authority to enforce compliance with the MES Act where he returned this case to UIA jurisdiction for a determination of penalties without instructing the Unemployment Insurance Agency to review the facts of this case to determine whether a quadruple penalty was warranted based on those facts and on the circumstances of this Claimant.
- IV. The Administrative Law Judge abrogated its authority by failing to address and resolve the issue before it, where he failed to rule on whether the Unemployment Insurance Agency has a duty to exercise discretion when deciding what penalty to impose.
- V. Where the Administrative Law Judge failed to require the UIA to review and revise the amount it claims is owed by the Claimant, this ruling was not supported by material and substantial evidence where the Administrative Law Judge found as fact that the Claimant had no notice of the penalties imposed on him until almost three years after



these penalties were imposed and the Claimant therefore should not have been responsible for payment of interest on the penalty until he had notice of the penalty.

Respectfully submitted,

**GWINN TAURIAINEN PLLC**



Laura Bradshaw Tucker (P42852)

Cc: Frank Lucente

**PROOF OF SERVICE**

LAURA BRADSHAW TUCKER, being an attorney for a party, states that she served a copy of Claimant's APPLICATION FOR ORAL ARGUMENT on the persons/entities listed below via US Mail, First Class, postage paid, on October 12, 2016:

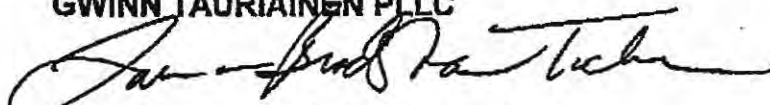
DART Properties  
500 Hogsback Road  
Mason, MI 48854-8523

UIA Fraud Investigation  
3024 W. Grand Boulevard  
Suite 12-200  
Detroit, MI 48202

Grand Rapids RICC  
P.O. Box 169  
Grand Rapids, MI 49501-0169  
Attn: Ed Alvarado/Chelsea Gill

Respectfully submitted,

**GWINN TAURIAINEN PLLC**



Laura Bradshaw Tucker (P42852)

Dated: October 12, 2016

# GWINN TAURIAINEN PLLC

Attorneys and Counselors at Law  
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Laura Bradshaw Tucker  
laura@gwinntauriainen.com

## FACSIMILE TRANSMITTAL

TO: Michigan Compensation Appellate Com. FAX NO: (517) 241-7326

FROM: L. Bradshaw Tucker, DATE: 10-12-16

PAGES: 2 Plus Cover

### MESSAGE:

Application for Oral Argument,  
Proof of Service

MICHIGAN COMPENSATION  
APPELLATE COMMISSION

OCT 12 2016

FILED: msf

\*\*\*\*\*  
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STATE OF MICHIGAN  
MICHIGAN COMPENSATION APPELLATE COMMISSION

In the Matter of

FRANK LUCENTE,

Claimant,

Appeal Docket No.: 16-014572-250597W

Social Security No.: XXX-XX-4637

DART PROPERTIES II, LLC,

Employer.

DECISION OF MICHIGAN COMPENSATION APPELLATE COMMISSION

On November 30, 2010, the Unemployment Insurance Agency (Agency) issued a redetermination that found the claimant committed fraud and owed penalties under Sections 54(b) and 62(b) of the Michigan Employment Security Act<sup>1</sup> (Act) because the claimant's "actions indicate [he] intentionally misled and/or concealed information to obtain benefits."<sup>2</sup> The claimant filed an untimely appeal of the November 30, 2010 redetermination on January 11, 2016. In response, the Agency issued a redetermination on January 19, 2016, which held that reconsideration of the November 30, 2010 redetermination was barred under Section 32a of the Act because the appeal was made more than one year after the issuance of the redetermination.

The Commission received a timely request from the claimant to present oral argument in this matter. We have read and considered the request and conclude oral hearing is not necessary for us to reach a decision. The request is denied.

Pursuant to the claimant's timely appeal of the January 19, 2016 redetermination, a hearing was held before an Administrative Law Judge (ALJ). Following the hearing, the ALJ issued a July 27, 2016 decision which reversed the January 19, 2016 redetermination and found the claimant established good cause for late appeal under Section 32a(2) of the Act. The ALJ then affirmed the Agency's November 30, 2010 redetermination and found the claimant subject to the fraud provisions of the Act, Sections 54(b) and 62(b).

This case is now before the Michigan Compensation Appellate Commission (Commission) pursuant to the claimant's timely appeal from the aforementioned July 27, 2016 ALJ decision.

---

<sup>1</sup> MCL 421.1 *et seq.*

<sup>2</sup> The Agency also issued an accompanying November 30, 2010 redetermination holding the claimant ineligible for benefits under the employed provision of the Act, Section 48, starting February 16, 2010. That issue is disposed of via Commission Appeal No. 250598.



- (2) The unemployment agency may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. A reconsideration shall not be made unless the request is filed with the unemployment agency, or reconsideration is initiated by the unemployment agency with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue.

As stated above, a benefit check is considered a determination that the claimant was eligible and qualified during the period covered by the check. Upon a protest by an employer,<sup>3</sup> the Agency may only issue "a redetermination of the claimant's eligibility or qualification as to that period." Any redetermination issued must either affirm, modify, or reverse the prior determination and state the reasons for the redetermination. If the Agency wants to issue an adjudication involving later weeks, the Agency may issue a separate determination as to those weeks.

The November 30, 2010 redetermination indicates that the claimant "intentionally withheld information to obtain benefits." Thus, the November 30, 2010 redetermination deals with intentional misrepresentation and does not relate to whether or not the claimant was eligible or qualified during any period of time. Therefore, as a matter of logic, it cannot be a redetermination of a previous benefit check determination. Thus, in violation of Section 32(a) of the Act, the Agency issued a redetermination without previously issuing a determination.

Furthermore, in violation of Section 32a(1) of the Act, the November 30, 2010 redetermination does not "state the reasons for the redetermination" nor is it a document "affirming, modifying, or reversing the prior determination." In fact, the November 30, 2010 redetermination does not include any reference whatsoever to any prior determination. The Act requires the redetermination to affirm, modify, or reverse a previous determination, which the November 30, 2010 redetermination clearly does not do. In addition, the redetermination failed to state the reasons for the redetermination. Thus, the redetermination failed in nearly every respect to conform to the requirements of a redetermination under Section 32a(1) of the Act.

We are left with the conclusion that the Agency issued the November 30, 2010 redetermination in violation of Sections 32(a) and 32a(1) of the Act. As the Agency was without authority to issue the materially defective and legally insufficient November 30, 2010 redetermination, the redetermination is null and void. As a result, there exists no valid Agency adjudication on the issue of fraud in this case. Because there was no validly issued and appealed adjudication before the ALJ, the ALJ was without jurisdiction to find the claimant subject to the fraud provisions of

<sup>3</sup> Contrary to the statutory requirement for issuing a redetermination of a benefit check determination under Section 32(f), there is no evidence of any protest by the employer in this case.





16-014572-250597W

Page 4

the Act. Therefore, we reverse the ALJ's decision holding the claimant subject to the fraud provisions of the Act, Sections 54(b) and 62(b).

Therefore,

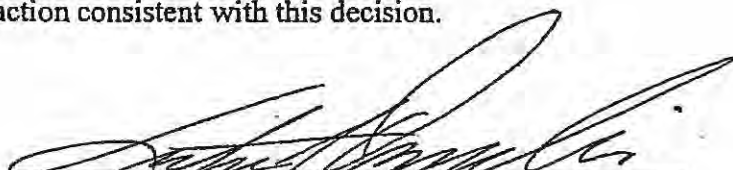
IT IS ORDERED that the ALJ's July 27, 2016 decision is hereby affirmed in part and reversed in part.

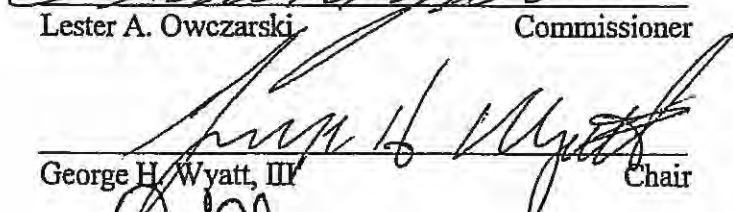
IT IS FURTHER ORDERED that the claimant had good cause for late appeal of the Agency's November 30, 2010 redetermination under Section 32a(2) of the Act.


IT IS FURTHER ORDERED that the claimant does not owe restitution under Section 62(a) of the Act.

IT IS FURTHER ORDERED that the claimant is not subject to the fraud penalties under Sections 62(b) and 54(b) of the Act.

This matter is referred to the Agency for action consistent with this decision.

  
Lester A. Owczarski Commissioner

  
George H. Wyatt, III Chair

  
David J. DeGraw Commissioner

MAILED AT LANSING, MICHIGAN

MAR 15 2017

This decision shall be final unless EITHER (1) the Michigan Compensation Appellate Commission RECEIVES a written request for rehearing on or before the deadline, OR (2) the appropriate circuit court RECEIVES an appeal on or before the deadline. The deadline is:

APR 14 2017

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.



STATE OF MICHIGAN  
MICHIGAN COMPENSATION APPELLATE COMMISSION

In the Matter of

FRANK LUCENTE,

Appeal Docket No.: 16-014604-250598W

Claimant,

Social Security No.: XXX-XX-4637

DART PROPERTIES II, LLC,

Employer.

DECISION OF MICHIGAN COMPENSATION APPELLATE COMMISSION

On November 30, 2010, the Unemployment Insurance Agency (Agency) issued a redetermination which held the claimant ineligible for benefits under the employed provision of the Michigan Employment Security Act<sup>1</sup> (Act), Section 48, starting February 16, 2010.<sup>2</sup> The claimant filed an untimely appeal of the November 30, 2010 redetermination on January 11, 2016. In response, the Agency issued a redetermination on January 19, 2016, which held that reconsideration of the November 30, 2010 redetermination was barred under Section 32a of the Act because the appeal was made more than one year after the issuance of the redetermination.

The Commission received a timely request from the claimant to present oral argument in this matter. We have read and considered the request and conclude oral hearing is not necessary for us to reach a decision. The request is denied.

Pursuant to the claimant's timely appeal of the January 19, 2016 redetermination, a hearing was held before an Administrative Law Judge (ALJ). Following the hearing, the ALJ issued a July 27, 2016 decision which reversed the January 19, 2016 redetermination and found the claimant established good cause for late appeal under Section 32a(2) of the Act. The ALJ then affirmed the Agency's November 30, 2010 redetermination and found the claimant ineligible for benefits under Section 48 of the Act starting February 16, 2010.

This case is now before the Michigan Compensation Appellate Commission (Commission) pursuant to the Agency's timely appeal from the aforementioned July 27, 2016 ALJ decision.

---

<sup>1</sup> MCL 421.1 *et seq.*

<sup>2</sup> The Agency also issued an accompanying November 30, 2010 redetermination holding that the claimant committed fraud and owed penalties under Sections 54(b) and 62(b) of the Act for misrepresenting his employment status to the Agency during that same time. That issue is disposed of via Commission Appeal No. 250597.



Having reviewed the record, we find the ALJ's decision must be affirmed in part and reversed in part. We affirm that portion of the ALJ's decision that found the claimant established good cause for late appeal under Section 32a(2) of the Act. We reverse that portion of the ALJ's decision that found the claimant ineligible for benefits under Section 48 of the Act. Our reasons are as follows. Section 32(a) of the Act provides, in part:

The unemployment agency shall designate representatives who shall promptly examine claims and make a determination on the facts . . . The claimant and other interested parties shall be promptly notified of the determination and the reasons for the determination. [Emphasis added.]

During the hearing, the Agency representative stated that the November 30, 2010 redetermination was a redetermination of a previously issued benefits check. Section 32(f) provides, in part:

The issuance of each benefit check shall be considered a determination by the unemployment agency that the claimant receiving the check was covered during the compensable period, and eligible and qualified for benefits. A chargeable employer, upon receipt of a listing of the check as provided in section 21(a), may protest by requesting a redetermination of the claimant's eligibility or qualification as to that period and a determination as to later weeks and benefits still unpaid that are affected by the protest. [Emphasis added.]

As stated above, a benefit check is considered a determination that the claimant was eligible and qualified during the period covered by the check. Upon a protest by an employer,<sup>3</sup> the Agency may only issue "a redetermination of the claimant's eligibility or qualification as to that period." If the Agency wants to issue an adjudication involving later weeks, the Agency may issue a separate determination as to those weeks.

The November 30, 2010 redetermination indicates that, starting February 16, 2010 the claimant is "ineligible for benefits under Section 48 of the [Act]." The only way that the Agency's November 30, 2010 redetermination is valid under Section 32(f) is if the determination in this case is the benefits check covering the period including February 16, 2010. The benefit check covering that period was issued in late March 2010 at the latest.

Section 32a of the Act provides, in pertinent part:

- (1) Upon application by an interested party for review of a determination, upon request for transfer to an administrative law judge for a hearing filed with the

<sup>3</sup> Contrary to the statutory requirement for issuing a redetermination of a benefit check determination under Section 32(f) of the Act, there is no evidence of any protest by the employer in this case.



unemployment agency within 30 days after the mailing or personal service of a notice of determination, or upon the unemployment agency's own motion within that 30-day period, the unemployment agency shall review any determination. After review, the unemployment agency shall issue a redetermination affirming, modifying, or reversing the prior determination and stating the reasons for the redetermination, or may in its discretion transfer the matter to an administrative law judge for a hearing. If a redetermination is issued, the unemployment agency shall promptly notify the interested parties of the redetermination, the redetermination is final unless within 30 days after the mailing or personal service of a notice of the redetermination an appeal is filed with the unemployment agency for a hearing on the redetermination before an administrative law judge in accordance with section 33. [Emphasis added.]

- (2) The unemployment agency may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. A reconsideration shall not be made unless the request is filed with the unemployment agency, or reconsideration is initiated by the unemployment agency with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue.

The Agency's November 30, 2010 redetermination was not issued by the Agency within 30 days of the March 2010 benefit check determination, and the Agency did not present any indication of good cause for the reconsideration. Thus, the March 2010 determination that the claimant was eligible and qualified for those weeks became final.

The analysis of this matter could end there. However, we write further to highlight the many legal and procedural irregularities in this case.

The November 30, 2010 redetermination does not "state the reasons for the redetermination" nor is it a document "affirming, modifying, or reversing the prior determination." In fact, the November 30, 2010 redetermination does not include any reference whatsoever to any prior determination. Thus, in addition to not being a timely redetermination under Section 32a(2) of the Act, the November 30, 2010 redetermination failed to include the information required by Section 32a(1) of the Act.



Without an employer protest of the March 2010 benefit check determination, the Agency was without authority to issue a redetermination of the benefit check determination.<sup>4</sup> Even if the Agency followed proper procedure, which it clearly did not, under Section 32(f), the Agency's redetermination of a benefit check determination may only cover the period of time covered by the benefit check determination. Under Section 32(f), if the Agency would like to issue an adjudication as to later weeks, the Agency must issue a determination. In this case, the Agency's redetermination covered the time from February 16, 2010 through present despite the fact that the March 2010 benefit check determination only covered two weeks.

The Agency's November 30, 2010 redetermination was issued in violation of numerous provisions of law: (1) it was untimely without good cause shown under Section 32a(2) of the Act; it failed in nearly every respect to conform to the requirements of a redetermination under Section 32a(1) of the Act; and (3) as it was a redetermination of a check determination under Section 32(f) of the Act, it impermissibly covered a time period outside the time covered by the determination check.

Thus, we are left with the conclusion that the Agency issued the November 30, 2010 redetermination in violation of Sections 32a(2), 32a(1), and 32(f) of the Act. As the Agency was without authority to issue the untimely November 30, 2010 redetermination, the redetermination is null and void. As a result, there exists no valid Agency adjudication regarding ineligibility under Section 48 of the Act. Because there was no validly issued and appealed adjudication before the ALJ, the ALJ was without jurisdiction to find the claimant ineligible. Therefore, we reverse the ALJ's decision holding the claimant ineligible for benefits under the employed provision of the Act, Section 48.

Therefore,

IT IS ORDERED that the ALJ's July 27, 2016 decision is hereby affirmed in part and reversed in part.

IT IS FURTHER ORDERED that the claimant had good cause for late appeal of the Agency's November 30, 2010 redetermination under Section 32a(2) of the Act.

IT IS FURTHER ORDERED that the claimant is not ineligible for benefits under Section 48 of the Act.

IT IS FURTHER ORDERED that the claimant does not owe restitution under Section 62(a) of the Act.

---

<sup>4</sup> The Agency did, however, have authority to issue a determination covering the entire relevant time period under Section 32(a) of the Act.

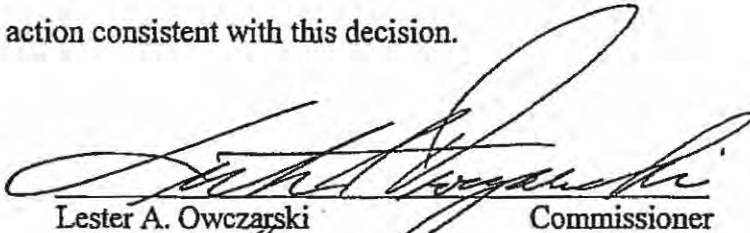


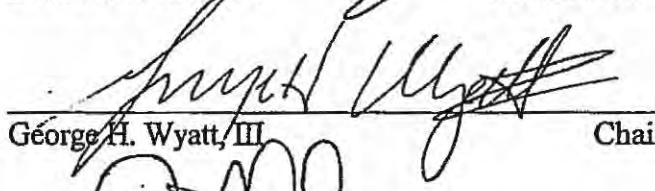
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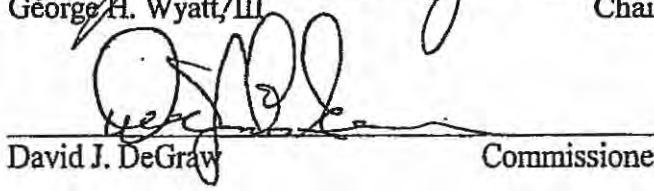
Page 5

IT IS FURTHER ORDERED that the claimant is not subject to the fraud penalties under Sections 62(b) and 54(b) of the Act.

This matter is referred to the Agency for action consistent with this decision.

  
Lester A. Owczarski Commissioner

  
George H. Wyatt, III Chair

  
David J. DeGraw Commissioner

MAILED AT LANSING, MICHIGAN

MAR 15 2017

This decision shall be final unless EITHER (1) the Michigan Compensation Appellate Commission RECEIVES a written request for rehearing on or before the deadline, OR (2) the appropriate circuit court RECEIVES an appeal on or before the deadline. The deadline is:

APR 14 2017

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.

# **APPENDIX 4**



STATE OF MICHIGAN  
SIXTEENTH JUDICIAL CIRCUIT COURT

MICHIGAN UNEMPLOYMENT INSURANCE  
AGENCY,

Agency-Appellant,

vs.

Case No. 17-125-AE

FRANK LUCENTE,

Claimant-Appellee,

and

DART PROPERTIES II, LLC

Employer-Appellee.

\_\_\_\_\_/

OPINION AND ORDER

This matter is before the Court on Appellant Michigan Unemployment Insurance Agency's claim of appeal. For the reasons set forth below, the decision of the Michigan Compensation Appellate Commission is AFFIRMED.

**I. Factual and Procedural Background**

This litigation arises out of the Michigan Unemployment Insurance Agency's (MUIA) appeal of the Michigan Compensation Appellate Commission's ("MCAC") March 15, 2017 decision, which held that Lucente was not subject to the fraud provision of the Michigan Employment Security Act. The MCAC vacated MUIA's demand that Lucente pay \$6,966.00 in restitution and \$26,964.00 in penalties, totaling of \$33,390. On April 19, 2017, MUIA filed the instant appeal of the MCAC's decision.



On July 12, 2017, MUIA filed its brief on appeal and requested oral arguments. On August 4, 2017, Lucente filed its motion to adjourn the scheduled hearing in this matter and extend time to file his responsive brief. In an *Opinion and Order* dated October 24, 2017, the Court granted Lucente's motion. On November 9, 2017, Lucente filed his response to MUIA's appeal. On November 27, 2017, MUIA filed its reply. The Court heard the parties' arguments on December 4, 2017, and took the matter under advisement.

## II. Standard of Review

"[T]he Michigan Employment Security Act [(MESA)], MCL 421.1 et seq., expressly provides for the direct review of unemployment benefit claims." *Hodge v US Security Assoc, Inc*, 497 Mich 189, 193; 859 NW2d 683 (2015). In pertinent part, MCL 421.38(1) provides:

The circuit court . . . may review questions of fact and law on the record made before the Administrative Law Judge ["ALJ"] and the [MCAC] involved in a final order or decision of the Michigan Compensation Appellate Commission ["MCAC"], and may make further orders in respect to that order or decision as justice may require, but the court may reverse an order or decision only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record.

"Substantial evidence is that which a reasonable mind would accept as adequate to support a decision, being more than a mere scintilla, but less than a preponderance of the evidence." *Vanzandt v State Employees Retirement Sys*, 266 Mich App 579, 584; 701 NW2d 214 (2005) (quotation marks and citation omitted). "Evidence is competent, material, and substantial if a reasoning mind would accept it as sufficient to support a conclusion." *City of Romulus v Mich Dep't of Environmental Quality*, 260 Mich App 54, 63; 678 NW2d 444 (2003). The circuit court may not substitute its own judgment for that of the MCAC when the MCAC's decision is properly supported. *Hodge*, 497 Mich at 193-94.



### III. Arguments

In its appeal, MUIA argues that its eligibility adjudication of Lucente was timely issued because the proceeding involved fraud, which has a six year filing limitation, pursuant to MCL 421.62(a). Specifically, MUIA contends that the MCAC ignored MCL 421.62(a) and only considered MCL 421.32. Next, MUIA claims that the MCAC erred as a matter of law in nullifying MUIA's fraud redetermination. Finally, MUIA asserts that the MCAC erred concluding that MUIA's eligibility and fraud adjudications lacked the information required by the Michigan Employment Security ("MES") Act, specifically MCL 421.32. Therefore, MUIA requests that this Court reverse the decisions of the MCAC and order Lucente to pay \$6,966.00 in restitution and \$26,964.00 in penalties, totaling \$33,390.

In response, Lucente argues that the MCAC properly found that MUIA's redetermination exceeded the scope of the initial determination, which is a violation of MCL 421.32. Further, Lucente claims that the MCAC properly found that the redetermination was deficient because it failed to fully state the reasons supporting its decision or state the determination it affirmed or modified. Additionally, Lucente contends that the six-year statutory period does not apply in this case because MUIA was aware of the facts supporting a finding of ineligibility by July 2010. Thus, Lucente claims that the MCAC decision is consistent with the MES Act and must be affirmed. Regardless of the MCAC decision, Lucente asserts in the alternative that addition of quadruple penalties of MCL 421.54(b) is not mandatory, impedes his rehabilitative potential, and fails to consider his ability to pay. Moreover, Lucente claims that MUIA violated his due process rights by collecting interest for four or more years while Lucente was unaware of MUIA's redetermination. Lucente claims he did not discover the MUIA sought payment until 2014, when his current employer informed him that his wages were being garnished. Lucente



also claims that MUIA increased the amount he owed from \$4,694.00 to \$6,966.00 without explanation.

In reply, MUIA claims that it complied with the due process requirements and thus did not violate Lucente's rights. Additionally, MUIA posits that it does not have discretion to reduce statutory penalties and that the penalties assessed are not unconstitutional. Finally, MUIA asserts that Court should reverse MCAC decision and remand to calculate damages only.

#### IV. Law and Analysis

Initially, the pertinent sections of the Michigan Employment Security Act to the instant case are MCL 421.32(a) and MCL 421.32a(1). MCL 421.32(a) provides:

Claims for benefits shall be made pursuant to regulations prescribed by the unemployment agency. The unemployment agency shall designate representatives who shall promptly examine claims and make a determination on the facts. The unemployment agency may establish rules providing for the examination of claims, the determination of the validity of the claims, and the amount and duration of benefits to be paid. The claimant and other interested parties shall be promptly notified of the determination and the reasons for the determination.

MCL 421.32a provides:

(1) Upon application by an interested party for review of a determination, upon request for transfer to an administrative law judge for a hearing filed with the unemployment agency within 30 days after the mailing or personal service of a notice of determination, or upon the unemployment agency's own motion within that 30-day period, the unemployment agency shall review any determination. *After review, the unemployment agency shall issue a redetermination affirming, modifying, or reversing the prior determination and stating the reasons for the redetermination,* or may in its discretion transfer the matter to an administrative law judge for a hearing. If a redetermination is issued, the unemployment agency shall promptly notify the interested parties of the redetermination, the redetermination is final unless within 30 days after the mailing or personal service of a notice of the redetermination an appeal is filed with the unemployment agency for a hearing on the redetermination before



an administrative law judge in accordance with section 33. [emphasis added.]

(2) The unemployment agency may, *for good cause*, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination . . . [emphasis added.]

In this case, the original “redetermination” was issued on November 30, 2010. Lucente appealed the redetermination on January 11, 2016, which was untimely. The MUIA issued another redetermination on January 19, 2016, which held that Lucente’s request for reconsideration of the November 30, 2010, redetermination was time-barred. Lucente appealed to the Administrative Law Judge, who reversed the MUIA’s January 19, 2016, finding that Lucente failed to establish good cause for his untimely appeal. Nevertheless, the Administrative Law Judge found Lucente subject to the fraud penalties pursuant to MCL 421.54(b) and MCL 421.62(b). Lucente then appealed the Administrative Law Judge’s decision to the MCAC. On March 15, 2017, the MCAC affirmed the Administrative Law Judge’s holding that Lucente established good cause for his late appeal of the MUIA’s redetermination, pursuant to MCL 421.32a(2). However, the MCAC reversed the Administrative Law Judge’s holding that Lucente to subject to the fraud penalties pursuant to MCL 421.54(b) and MCL 421.62(b). Accordingly, MCAC held that Lucente does not owe restitution.

The MCAC decision was highly critical of MUIA’s redetermination. The MCAC found that MUIA’s “redetermination failed in nearly every respect to conform to the requirements of a redetermination under [MCL 421.32a(1)].” See MCAC Decision at 3. Specifically, the MCAC found that the MUIA’s redetermination did not “state the reasons for the redetermination” nor is it a document “affirming, modifying, or reversing the prior determination,” in violation on MCL



421.32a(1). *Id.* Consequently, the MCAC found that the redetermination was “materially defective and legally insufficient . . . null and void. As a result, there exists no valid [MUIA] adjudication on the issue of fraud in this case.” *Id.* Therefore the MCAC held that Lucente “is not subject to the fraud penalties under Sections 62(b) and 54(b) of the Act.” *Id.* at 4.

As stated above in section II, this Court may not substitute its own judgment for that of the MCAC when the MCAC’s decision is properly supported. *Hodge*, 497 Mich at 193-94. After reviewing the MCAC decision MUIA’s arguments on appeal, the Court finds that the MCAC decision was properly supported. MUIA’s arguments failed to persuade the MCAC that a quadruple fraud penalty of MCL 421.54(b) is mandatory for Lucente. After reviewing MUIA’s arguments, this Court is also unpersuaded. The Court adopts the analysis of the MCAC decision. Accordingly, the Court is convinced that the decision of the MCAC must be AFFIRMED. Having affirmed the MCAC decision, it is not necessary for the Court to address the remaining arguments.<sup>1</sup>

### V. Conclusion

For the reasons set forth above, the decision of the Michigan Compensation Appellate Commission is AFFIRMED. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* resolves the last pending claim and closes this case.

IT IS SO ORDERED.

DIANE M. DRUZINSKI

CIRCUIT JUDGE

Hon. Diane M. Druzinski, Circuit Court Judge

Date;

JAN - 4 2018

A TRUE COPY  
KAREN A. SPRANGER, COUNTY CLERK

BY: *Jmaeflemie*

<sup>1</sup> MUIA relies on *Michigan Unemployment Insurance Agency v Fisk*, unpublished decision of the 17<sup>th</sup> Judicial Circuit Court (Case No. 17-752-AE). With regard to MUIA’s reliance on this unpublished opinion, “[a]n unpublished opinion is not precedentially binding” on this Court. MCR 7.215(C)(1). Furthermore, a cursory review of *Fisk* reveals that it is factually distinguishable from the case at bar.



DMD/ac

cc: Jason Hawkins, Esq.1  
Daniel A. Gwinn, Esq./Laura Bradshaw-Tucker, Esq.

# **APPENDIX 5**



**Court of Appeals, State of Michigan**

**ORDER**

Michigan Unemployment Insurance Agency v Frank Lucente;  
Unemployment Insurance Agency v Andrew Augustine; Department  
of Talent and Economic Development v Michael Herzog; Department  
of Talent and Economic Development v Wayne Carlisle

Michael F. Gadola  
Presiding Judge

Deborah A. Servitto

James Robert Redford  
Judges

Docket Nos. 342080; 344074; 345074; 345943

LC Nos. 2017-000125-AE; 18-000267-AE; 18-003162-AE; 18-  
003500-AE

---

On the Court's own motion, the Court orders that these appeals are CONSOLIDATED to  
advance the efficient administration of the appellate process.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

June 18, 2019  
Date



Chief Clerk

CHRISTOPHER M. MURRAY  
CHIEF JUDGE  
JANE M. BECKERING  
CHIEF JUDGE PRO TEM  
DAVID H. SAWYER  
MARK J. CAVANAGH  
KATHLEEN JANSEN  
JANE E. MARKEY  
PATRICK M. METER  
KIRSTEN FRANK KELLY  
KAREN FORT HOOD  
STEPHEN L. BORRELLO  
DEBORAH A. SERVITTO  
ELIZABETH L. GLEICHER  
CYNTHIA DIANE STEPHENS



State of Michigan  
**Court of Appeals**

MICHAEL J. KELLY  
DOUGLAS B. SHAPIRO  
AMY RONAYNE KRAUSE  
MARK T. BOONSTRA  
MICHAEL J. RIORDAN  
MICHAEL F. GADOLA  
COLLEEN A. O'BRIEN  
BROCK A. SWARTZLE  
THOMAS C. CAMERON  
JONATHAN TUKEL  
ANICA LETICA  
JAMES ROBERT REDFORD  
JUDGE  
JEROME W. ZIMMER JR.  
CHIEF CLERK

**POLICY ON CONSOLIDATED CASES**

The enclosed order consolidates the noted appeals. This statement explains the effect of consolidation on the appellate process.

**FILING DEADLINES** regarding transcripts, motions or briefs will not be affected by the consolidation. Rather, those deadlines that would apply in each individual docket number will be enforced by the Court. Where brief due dates are different in each docket number, on motion to the Court and payment of one motion fee counsel may be permitted to consolidate brief due dates so that one brief may be filed.

**CAPTIONS** in consolidated cases are not generally affected by consolidation. The easiest and most accurate way to caption a pleading to be filed in a set of consolidated cases is to reproduce the individual captions seriatim, in ascending order of this Court's docket numbers. Party connections, such as defendant-appellant, plaintiff-appellee, should be accurate within each docket number. Combining all parties and party connections into one catch-all caption is discouraged because it is almost impossible to do so without sacrificing accuracy.

**DOCKETING** of pleadings will be most quickly accomplished if the title of the pleading specifies the individual docket number(s) in which filing is to be made. For example, where plaintiff is appellant in one case and appellee in the other, docketing will be facilitated by the following pleading title:

"Plaintiff-Appellant's Brief in No. 229000"

**FORMAL SUBMISSION** of consolidated cases to a panel is joint. The panel will receive all briefs filed in all parts of the consolidated cases. If oral argument has been preserved, the cases will be argued as one case before the same panel. Time allotted to each side for oral argument will be calculated pursuant to MCR 7.214(B). Note that if a brief is late in one case of a set of consolidated cases, oral argument as to the issues raised in that brief is not preserved.

**DECISION** of consolidated cases will occur in one opinion. Release of the opinion will occur as per the Court's customary procedures.

If you have any questions at all about preparing documents for filing in your consolidated appeals, please contact the Clerk's Office for assistance.

DETROIT OFFICE  
CADILLAC PLACE  
3020 W. GRAND BLVD. SUITE 14-300  
DETROIT, MICHIGAN 48202-6020  
(313) 972-5678

TROY OFFICE  
COLUMBIA CENTER  
201 W. BIG BEAVER RD. SUITE 800  
TROY, MICHIGAN 48064-4127  
(248) 524-8700

GRAND RAPIDS OFFICE  
STATE OF MICHIGAN OFFICE BUILDING  
350 OTTAWA, N.W.  
GRAND RAPIDS, MICHIGAN 49503-2349  
(616) 456-1167

LANSING OFFICE  
925 W. OTTAWA ST.  
P.O. BOX 30022  
LANSING, MICHIGAN 48909-7522  
(517) 373-0786



# **APPENDIX 6**

**Court of Appeals, State of Michigan**

**ORDER**

Michigan Unemployment Insurance Agency v Frank Lucente;

Michael F. Gadola  
Presiding Judge

Department of Talent and Economic Development v Michael Herzog;

Deborah A. Servitto

Department of Talent and Economic Development v Wayne Carlisle

James Robert Redford  
Judges

Docket No. 342080; 345074; 345943

LC No. 2017-000125-AE; 18-003162-AE; 18-003500-AE

The Court orders that claimant-appellee Frank Lucente's motion for reconsideration is  
DENIED.

The Court orders that claimant-appellee Michael Herzog's motion for reconsideration is  
DENIED.

The Court orders that claimant-appellee Wayne Carlisle's motion for reconsideration is  
DENIED.

  
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

**DEC 10 2019**

Date

  
Chief Clerk



# **APPENDIX 7**

345074

RECEIVED by MSC 9/9/2020 8:16:51 PM



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

August 21, 2018

Michigan Court of Appeals  
Cadillac Place  
3020 W. Grand Blvd., Ste. 14-300  
Detroit, MI 48202-6020

Dear Sir or Madam:

Enclosed please find a copy of the Certified Record of Proceedings in the matter of **State of Michigan, Department of Licensing and Regulatory Affairs (LARA), Unemployment Insurance Agency vs. Michael Herzog and Custom Form Inc..**

This is the same certified record that was mailed to the Wayne County Circuit Court on April 16, 2018 in the above-entitled matter.

Should you have any questions, please don't hesitate to contact our office at (517) 284-9300.

Respectfully yours,

Emily Holscher, Clerk  
Michigan Compensation Appellate Commission

Enclosure

Cc: Attorney General



STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

STATE OF MICHIGAN,  
DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS (LARA),  
UNEMPLOYMENT INSURANCE AGENCY,  
Appellant,

vs.  
MICHAEL HERZOG  
AND  
CUSTOM FORM INC.,  
Appellees.

---

C. A. No. 18-003162-AE

Ms. Jessica Mullen (P80489),  
Asst. Atty. Gen., repr., the U.A.  
TEL: 1-313-456-2200  
Attorney for Appellant

Michael Herzog  
and  
Custom Form Inc.,  
Appellees

CERTIFICATION  
  
OF  
  
AND  
  
RECORD OF PROCEEDINGS  
  
BY  
  
MICHIGAN COMPENSATION APPELLATE COMMISSION

State of Michigan  
Michigan Compensation Appellate Commission  
525 West Allegan Street  
P. O. Box 30475  
Lansing, Michigan 48909  
TEL: 1-517-284-9300

**RECEIVED**  
AUG 23 2018  
COURT OF APPEALS FIRST DISTRICT

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

STATE OF MICHIGAN,  
DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS (LARA),  
UNEMPLOYMENT INSURANCE AGENCY,  
Appellant,

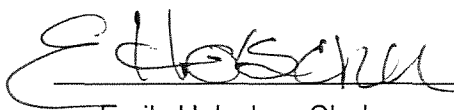
vs.  
MICHAEL HERZOG  
AND  
CUSTOM FORM INC.,  
Appellees.

C. A. No. 18-003162-AE

**CERTIFICATION OF RECORD OF PROCEEDINGS**

I, Emily Holscher, Clerk do hereby certify that attached hereto is a true and correct copy of the Record in the offices of the Michigan Compensation Appellate Commission in a matter known as Appeal Docket No. **17-023820-255163 & 17-023800-255164** and consisting of the following:

	<b>Page No.</b>
1. Appeal to Administrative Law Judge and Notice of Hearings dated November 7, 2017. (Miscellaneous Media) .....	1-6 7-9
2. Administrative Law Judge's Order rendered November 22, 2017. 17-023820 .....	10-12 13-15
3. Appeal to Michigan Compensation Appellate Commission from Administrative Law Judge's decision filed December 20, 2017.	16-36
4. Claimant's Correspondence Letter to Michigan Compensation Appellate Commission filed January 23, 2018.	37-40
4. Decision of Michigan Compensation Appellate Commission rendered February 28, 2018. 17-023820-255163 .....	41-42 43-44

  
\_\_\_\_\_  
Emily Holscher, Clerk

A copy of the **CERTIFIED RECORD OF PROCEEDINGS**  
was mailed this **16th** day of **April**,  
A.D., 2018 to the following:  
Wayne County Circuit Court  
Ms. Jessica Mullen (P80489),  
Asst. Atty. Gen., repr., the U.A.  
(Attorney for Appellant)  
Michael Herzog  
and  
Custom Form Inc.,  
(Appellees)



STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

STATE OF MICHIGAN,  
DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS (LARA),  
UNEMPLOYMENT INSURANCE AGENCY,  
Appellant,

vs.

C. A. No. 18-003162-AE

MICHAEL HERZOG  
AND  
CUSTOM FORM INC.,  
Appellees.

---

Ms. Jessica Mullen (P80489),  
Asst. Atty. Gen., repr., the U.A.  
TEL: 1-313-456-2200  
Attorney for Appellant

Michael Herzog  
and  
Custom Form Inc.,  
Appellees

PROOF OF SERVICE

OF

CERTIFICATION OF RECORD OF PROCEEDINGS

OF

MICHIGAN COMPENSATION APPELLATE COMMISSION

State of Michigan  
Michigan Compensation Appellate Commission  
525 West Allegan Street  
P. O. Box 30475  
Lansing, Michigan 48909  
Telephone:

1-517-284-9300

## STATE OF MICHIGAN

## IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

STATE OF MICHIGAN,  
DEPARTMENT OF LICENSING AND  
REGULATORY AFFAIRS (LARA),  
UNEMPLOYMENT INSURANCE AGENCY,  
Appellant,

vs.  
MICHAEL HERZOG  
AND  
CUSTOM FORM INC.,  
Appellees.

C. A. No. 18-003162-AE

**PROOF OF SERVICE**  
**OF CERTIFICATION OF RECORD OF PROCEEDINGS OF**  
**MICHIGAN COMPENSATION APPELLATE COMMISSION**

STATE OF MICHIGAN ) SS  
COUNTY OF WAYNE )

I, Emily Holscher, being first duly sworn, deposes and says that she is an employee of the Michigan Compensation Appellate Commission and that she served Jessica Mullen an Assistant Attorney General representing the State of Michigan, Department of Licensing and Regulatory Affairs (LARA), Unemployment Insurance Agency, with a true copy of the Certified Record of Proceedings of the Michigan Compensation Appellate Commission in the above-entitled appeal by delivery thereof to her office at Cadillac Place, 3030 W. Grand Blvd., Ste. 9-600, Detroit, MI 48202, as well as mailing a true copy to the below-named parties by first-class mail, postage thereon fully prepaid, on April 16, 2018:

**NAME**

Michael Herzog  
(Appellee)

Custom Form Inc.  
(Appellee)

**ADDRESS**

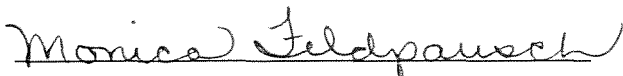
1127 Devonshire Rd.  
Grosse Pointe Park, MI 48230

1546 E. 9 Mile Rd.  
Hazel Park, MI 48030

**Further deponent sayeth not.**

  
Emily Holscher

Subscribed and sworn to before me  
this 16th day of April, 2018



Monica Feldpausch  
Notary Public, State of Michigan  
County of Clinton  
My commission expires: 10/22/2018  
Acting in the County of Ingham



10/30/17

Received UIA/GR WDC

NOV 03 2017

Dear Sir/Madam:

Yes I disagree with this re-determination and went to appeal. I welcome an Advocate to help me. My letter (Attached) states my case. I was so far in debt during 2016 that I needed to become current on my car payments so I could get to the job I had finally secured.

I went to the Mi Works office after in the Spring of 2016 to find out why my UI was not going through. I went to three different offices. I was active in my pursuit. I did not sit <sup>idly</sup> ~~stagnant~~ by.

I welcome a chance to defend myself if this letter is not Adequate.

M J

October 15, 2017

I was laid off on January 8, 2016. I applied for unemployment in early February, 2016. I was supposed to start getting checks in March of 2016. I went to the Michigan Works office every two weeks during March, April and May. (I sent in documentation to prove this in May, 2017.) I didn't receive my first check until June of 2016. I incurred many bills and large credit card balances during this January to June timeframe. I owed back rent, utility bills and car payments, amongst food bills.

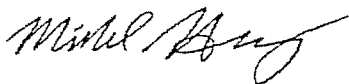
I started working at Custom Form on October 10, 2016. At that time, I was still paying off my back bills. I understood I was entitled to 26 weeks of unemployment checks. After my 26 weeks were up, I no longer called MARVIN as I was then working at Custom Form full time.

I am now at another job, earning less money and still paying off my credit card balances. Being out of work from mid-January, 2016, until October, 2016, hurt my finances. Getting unemployment from June to November had helped me get back on my feet. I was unemployed for 37 weeks and collected for only 26 weeks. I was unemployed for 21 weeks before I ever got my first check! I needed the money to pay my bills. I have paperwork that says I was approved for 26 weeks.

I hope this letter and these attachments clarify why I collected for my approved 26 weeks. I understand you might want me to refund to you the money I collected from October 11, 2016 to November 18, 2016, but I find the \$7000+ penalty to be outrageous, not to mention that I do not have that kind of money to give you. I can make payments for the \$1800, if this is what you prefer.

I feel I deserved the 26 weeks of checks because of the 21 week delay in my getting my first check. How have other unemployed people handled 21 weeks of no income?

I look forward to a positive resolution to this issue,



Michael Herzog

Case Number: 0-009-757-100

Received UIA/GR WDC

NOV 03 2017



RICK SNYDER  
GOVERNORSTATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Division of Unemployment AppealsSHELLY EDGERTON  
DIRECTORDate Mailed: November 07, 2017  
Appeal Number: 17-023820  
Case Number: 9757100  
Claimant SSN: XXX-XX-  
Employer No.: 0435090000

## NOTICE OF IN PERSON HEARING

On November 03, 2017, the claimant appealed an Unemployment Insurance Agency (Agency) Adjudication issued on October 11, 2017.

Under Michigan Statutes, MCL 421.33, a hearing will be held before Administrative Law Judge **Kenneth P. Poirier**. Failure to attend hearing may result in an unfavorable decision against you.

**Date:** November 28, 2017**Time:** 09:30 AM**Location:**Unemployment Appeals Detroit 2nd Fl  
3026 West Grand Boulevard  
2nd Floor Annex, Ste 2-700 (ID  
Required)  
Detroit, MI 48202

The hearing is scheduled for 60 minutes.

Issues to be considered at this hearing:

Section 48  
Section 54(b)

Whether claimant is eligible for benefits under the employed provision.  
Claimant must pay restitution/damages to Agency under Section 54(b)-intentional misrepresentation. Sections that may apply: 62(a), 62(b), 20(a). Each party shall provide witness list and documentary evidence to other parties and Judge not less than 10 days before a fraud hearing, per R 792.11408(2). \*\*Due to the distance to the hearing site, parties may request telephone participation.

Please contact the Michigan Administrative Hearing System at (313) 456-2700 if you require accommodation for the hearing, such as a sign language interpreter, reader, or any assistive equipment.

Front

File Copy

MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Phone: (313) 456-2700| Fax: (517) 763-0135

**Interested Parties that were also mailed this notice:**

<b>Appellant</b>	MICHAEL HERZOG 1127 DEVONSHIRE RD GROSSE POINTE PARK, MI 482301418
<b>Respondent</b>	CUSTOM FORM INC 1546 E 9 MILE RD HAZEL PARK, MI 480301964
<b>Interested Party</b>	UIA FRAUD INVESTIGATION 3024 W. GRAND BLVD, STE 12-450 DETROIT, MI 48202
<b>Interested Party</b>	MARIANNE HOLST, GR RICC PO BOX 169 GRAND RAPIDS, MI 49501-0169

**Additional Hearing Information**

**RECORDS AND WITNESSES:** If you wish to offer any papers or records relevant to the case, including any previous papers or records sent to the Unemployment Insurance Agency. YOU MUST FAX OR MAIL THEM TO THE JUDGE AND THE OTHER PARTY in time to ensure the documents are received before the date of the scheduled hearing. You may present witnesses to testify on your behalf. A witness is a person who has direct knowledge of the issue in dispute.

**ADVOCACY PROGRAM:** The Advocacy Program is operated by the Unemployment Insurance Agency (UIA) and provides advocacy assistance to the unemployed worker or employer. If you do not have an Advocate by the time of this hearing, that in and of itself **will not entitle you to an adjournment**. For more information please call 1-800-638-3994.

**INFORMATION:** If you want additional information regarding the appeal process, please visit the following website [http://www.michigan.gov/documents/uia\\_UC1800\\_76144\\_7.pdf](http://www.michigan.gov/documents/uia_UC1800_76144_7.pdf) or refer to your unemployment guide book. Additional questions may be directed to MAHS at:

**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**  
3026 West Grand Boulevard  
2nd Floor Annex, Ste 2-700  
Detroit, MI 48202  
Phone: (313) 456-2700 | Fax: (517) 763-0135

**Back**



RICK SNYDER  
GOVERNORSTATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Division of Unemployment AppealsSHELLY EDGERTON  
DIRECTORDate Mailed: November 07, 2017  
Appeal Number: 17-023800  
Case Number: 9757101  
Claimant SSN: XXX-XX-  
Employer No.: 0435090000**NOTICE OF IN PERSON HEARING**

On November 03, 2017, the claimant appealed an Unemployment Insurance Agency (Agency) Adjudication issued on October 11, 2017.

Under Michigan Statutes, MCL 421.33, a hearing will be held before Administrative Law Judge **Kenneth P. Poirier**. Failure to attend hearing may result in an unfavorable decision against you.

**Date:** November 28, 2017**Time:** 09:30 AM**Location:**Unemployment Appeals Detroit 2nd Fl  
3026 West Grand Boulevard  
2nd Floor Annex, Ste 2-700 (ID  
Required)  
Detroit, MI 48202

The hearing is scheduled for 60 minutes.

Issues to be considered at this hearing:

Section 62(b)	Whether claimant intentionally made a false statement, misrepresented, or concealed material information to obtain benefits.
Section 54(b)	Claimant must pay restitution/damages to Agency under Section 54(b)-intentional misrepresentation. Sections that may apply: 62(a), 62(b), 20(a). Each party shall provide witness list and documentary evidence to other parties and Judge not less than 10 days before a fraud hearing, per R 792.11408(2). **Due to the distance to the hearing site, parties may request telephone participation.

Please contact the Michigan Administrative Hearing System at (313) 456-2700 if you require accommodation for the hearing, such as a sign language interpreter, reader, or any assistive equipment.

Front

File Copy

MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Phone: (313) 456-2700| Fax: (517) 763-0135

**Interested Parties that were also mailed this notice:**

<b>Appellant</b>	MICHAEL HERZOG 1127 DEVONSHIRE RD GROSSE POINTE PARK, MI 482301418
<b>Respondent</b>	CUSTOM FORM INC 1546 E 9 MILE RD HAZEL PARK, MI 480301964
<b>Interested Party</b>	UIA FRAUD INVESTIGATION 3024 W. GRAND BLVD, STE 12-450 DETROIT, MI 48202
<b>Interested Party</b>	MARIANNE HOLST, GR RICC PO BOX 169 GRAND RAPIDS, MI 49501-0169

**Additional Hearing Information**

**RECORDS AND WITNESSES:** If you wish to offer any papers or records relevant to the case, including any previous papers or records sent to the Unemployment Insurance Agency. **YOU MUST FAX OR MAIL THEM TO THE JUDGE AND THE OTHER PARTY** in time to ensure the documents are received before the date of the scheduled hearing. You may present witnesses to testify on your behalf. A witness is a person who has direct knowledge of the issue in dispute.

**ADVOCACY PROGRAM:** The Advocacy Program is operated by the Unemployment Insurance Agency (UIA) and provides advocacy assistance to the unemployed worker or employer. If you do not have an Advocate by the time of this hearing, that in and of itself **will not entitle you to an adjournment**. For more information please call 1-800-638-3994.

**INFORMATION:** If you want additional information regarding the appeal process, please visit the following website [http://www.michigan.gov/documents/uia\\_UC1800\\_76144\\_7.pdf](http://www.michigan.gov/documents/uia_UC1800_76144_7.pdf) or refer to your unemployment guide book. Additional questions may be directed to MAHS at:

**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**  
3026 West Grand Boulevard  
2nd Floor Annex, Ste 2-700  
Detroit, MI 48202  
Phone: (313) 456-2700 | Fax: (517) 763-0135

[Back](#)





Mail Date: October 11, 2017  
Letter ID: L0040213947  
CLM: C4281540-0  
Name: MICHAEL HERZOG

|||||  
MICHAEL HERZOG  
1127 DEVONSHIRE RD  
GROSSE POINTE PARK MI 48230-1418

### Notice of Redetermination

Case Number: 0-009-757-100  
SSN: ### ##  
Claimant: MICHAEL HERZOG  
BYB: February 07, 2016  
Employer Number: 0435090-000  
Involved Employer: CUSTOM FORM INC

Issues and Sections of Michigan Employment Security (MES) Act involved: Not Unemployed and 48.

There is a question in regard to your employment status.

You began working full-time for CUSTOM FORM INC from October 10, 2016 through March 03, 2017.  
You are not eligible for benefits while working full-time.

You are ineligible for benefits under MES Act, Sec. 48 from October 09, 2016 through March 04, 2017.  
You will not receive benefit payments during this period.

Pursuant to Section 20(a) if an employer has established a pattern of failing to provide timely or adequate information in response to Agency requests for the purpose of making proper adjudications of claims/issues; the employer's account will not be credited for benefits paid prior to the date that the protest providing timely or adequate information was received.

Calculation of interest and penalty amount is shown later on this form.

If you disagree with this redetermination, refer to "Appeal Rights" on the reverse side of this form.



TIA is an Equal Opportunity Employer/Program.



MICHAEL HERZOG  
1127 DEVONSHIRE RD  
GROSSE POINTE PARK MI 48230-1418

Mail Date: October 11, 2017  
Letter ID: L0040213949  
CLM: C4281540-0  
Name: MICHAEL HERZOG

### Restitution (List of Overpayments)

Case Number 0-009-757-100 BYB: February 07, 2016  
SSN: ### ## Employer Number: 0435090-000  
Claimant: MICHAEL HERZOG Involved Employer: CUSTOM FORM INC

Should your disqualification or ineligibility be reversed, restitution shall cease if you are not otherwise disqualified or ineligible for unemployment benefits. Any restitution resulting from the issue(s) addressed in this (re)determination does not affect any restitution that you may owe for the same weeks on a different (re) determination or decisions.

Calculation of interest and penalty amount is shown later on this form.

Week Ending	Principal	Penalty	Total
15-Oct-2016	\$362.00	\$1,448.00	\$1,810.00
22-Oct-2016	\$362.00	\$1,448.00	\$1,810.00
29-Oct-2016	\$362.00	\$1,448.00	\$1,810.00
05-Nov-2016	\$362.00	\$1,448.00	\$1,810.00
12-Nov-2016	\$362.00	\$1,448.00	\$1,810.00
	<b>\$1,810.00</b>	<b>\$7,240.00</b>	<b>\$9,050.00</b>

Claimant must pay to the Agency in cash, by check, money order, EFT via MiWAM or deduction from benefits, restitution in the amount of \$9,050.00 under MES Act, Section 62(a) as itemized above.

Reason for overpayment does not come within the criteria for waiver. If you are unable to repay the balance owed due to indigency, you may request, or reapply for, a waiver due to your financial status at any time via fax at (517) 636-0427, mail at UIA, PO Box 169, Grand Rapids MI 49501-0169, or your MiWAM account.

Repayment arrangements should be made with the Benefit Overpayment Collection (BOC) Unit. For information on repayment or repayment arrangements, contact BOC at 1-800-638-6372 from 9:00 a.m. to 3:00 p.m. Eastern Time Monday through Friday. Checks or money orders must be made payable to the "State of Michigan for UIA." Submit the check or money order with the payment voucher that will be attached to the monthly statement. The address is: State of Michigan, Unemployment Insurance - Restitution, Dept #771760, PO Box 77000 Detroit, MI 48277-1760. DO NOT SEND CASH. You may also make restitution payments through your MiWAM account by setting up electronic funds transfer (EFT) payments.



TIA is an Equal Opportunity Employer/Program.





|||||  
MICHAEL HERZOG  
1127 DEVONSHIRE RD  
GROSSE POINTE PARK MI 48230-1418

Mail Date: October 11, 2017  
Letter ID: L0040213945  
CLM: C4281540-0  
Name: MICHAEL HERZOG

### Notice of Redetermination

Case Number: 0-009-757-101      BYB: February 07, 2016  
SSN: ### ##      Employer Number: 0435090-000  
Claimant: MICHAEL HERZOG      Involved Employer: CUSTOM FORM INC

Issues and Sections of Michigan Employment Security (MES) Act involved: Misrepresentation and 62(b).

This (re)determination is being issued as a result of the determination in case 0-009-757-100 involving Not Unemployed 48.

You received benefits based on the case referenced above. These payments, which can be found on the List of Overpayments, are now found to be improper because you were found ineligible for benefits due to reporting your earnings improperly.

Your actions indicate you intentionally misled and/or concealed information to obtain benefits you were not entitled to receive. Benefits will be terminated on any claims active on October 08, 2016.

You are disqualified for benefits under MES Act, Sec. 62(b). Restitution is due under MES Act, Sec. 62 (a). The wages used to establish your claim are cancelled and no further benefits will be paid based on those wages. In addition, you are required to pay the penalty assessed based on this determination under MES Act, Sec. 54(b). If the amount of restitution due is less than \$500, the penalty is double the restitution due, except that for a subsequent intentional misrepresentation the penalty amount is four times the restitution due. If the amount of restitution due is \$500 or more, the penalty is four times the restitution due.

Pursuant to Section 20(a) if an employer has established a pattern of failing to provide timely or adequate information in response to Agency requests for the purpose of making proper adjudications of claims/issues; the employer's account will not be credited for benefits paid prior to the date that the protest providing timely or adequate information was received.

Calculation of interest and penalty amount is shown later on this form.

If you disagree with this redetermination, refer to "Appeal Rights" on the reverse side of this form.



TIA is an Equal Opportunity Employer/Program.

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Form 1850

MICHAEL HERZOG  
1127 DEVONSHIRE RD  
GROSSE POINTE PARK, MI 48230CUSTOM FORM INC  
1546 E 9 MILE RD  
HAZEL PARK, MI 48030

ADMINISTRATIVE LAW JUDGE: KENNETH P. POIRIER

SSN: XXX-XX-██████

Docket No.: 17-023820

Case No.: 9757100

ORDER SETTING ASIDE REDETERMINATIONS AS VOID

This is a companion to the order issued in docket number 17-023800, case number 9757101.

On November 3, 2017 the claimant appealed two Unemployment Insurance Agency redeterminations issued on October 11, 2017, under the two case numbers noted above. Collectively the adjudications held that the claimant was ineligible for benefits under the definition of unemployed found at Section 48 from October 9, 2016, through March 4, 2017, and that he was subject to restitution and fraud penalties under Sections 54 and 62 of the Act. Agency records show that no determination was issued under either case number.

Section 32(a) of the Act states in pertinent part that "[T]he unemployment agency shall designate representatives who shall promptly examine claims and make a determination on the facts... The claimant and other interested parties shall be promptly notified of the determination and the reasons for the determination. [Emphasis added.]"

Section 32a(1) of the Act states in pertinent part that "[U]pon application by an interested party for review of a determination... the unemployment agency shall review any determination. After review, the unemployment agency shall issue a redetermination affirming, modifying, or reversing the prior determination and stating the reasons for the redetermination... [Emphasis added.]"

In *Martha R. Fisk v Prostaff Employment Solutions, LLC*, Michigan Compensation Appellate Commission, 15-057282-248256W and 15-057299-248257W (May 23, 2016), the Michigan Compensation Appellate Commission cited these provisions of the Act and stated the following: "Clearly, the statute requires a determination to be issued before a redetermination. Failure to issue a determination not only violates the statute, it violates the parties' due process rights. A redetermination without a determination is void as a matter of law. [Emphasis in the original.]"

17-023820

Page 1



It is noted that the October 11, 2017 redetermination issued in case number 9757101 includes the following statement: "[T]his (re)determination is being issued as a result of the determination in case 0-009-757-100 involving Not Unemployed 48." However, no such determination was brought to the attention of the undersigned in anticipation of the hearing scheduled for this matter, and, as noted above, Agency records do not show that any such determination was ever issued.

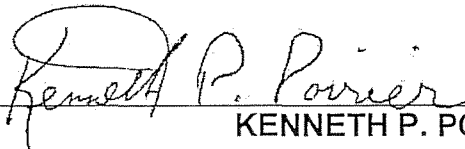
Based on the above considerations, it is concluded that the redeterminations in this matter are set aside.

The October 11, 2017 redeterminations issued by the Agency in this matter are set aside, since they are void as a matter of law.

The October 11, 2017 redeterminations shall not provide the basis for any action against the interests of either the claimant or the employer.

The October 11, 2017 redeterminations shall not provide the basis for collection of any restitution or penalties.

DATED: November 22, 2017

  
KENNETH P. POIRIER  
ADMINISTRATIVE LAW JUDGE

I hereby certify that I personally mailed envelopes, properly addressed to each of the parties at their respective addresses as listed on page one. In each envelope a true copy of the Administrative Law Judge Decision or Order was enclosed.

J. Willis	Detroit	November 22, 2017
Name	City Mailed	Date Mailed





STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Form 1850

MICHAEL HERZOG  
1127 DEVONSHIRE RD  
GROSSE POINTE PARK, MI 48230CUSTOM FORM INC  
1546 E 9 MILE RD  
HAZEL PARK, MI 48030

ADMINISTRATIVE LAW JUDGE: KENNETH P. POIRIER

SSN: XXX-XX-██████

Docket No.: 17-023800

Case No.: 9757101

**ORDER SETTING ASIDE REDETERMINATIONS AS VOID**

This is a companion to the order issued in docket number 17-023820, case number 9757100.

On November 3, 2017 the claimant appealed two Unemployment Insurance Agency redeterminations issued on October 11, 2017, under the two case numbers noted above. Collectively the adjudications held that the claimant was ineligible for benefits under the definition of unemployed found at Section 48 from October 9, 2016, through March 4, 2017, and that he was subject to restitution and fraud penalties under Sections 54 and 62 of the Act. Agency records show that no determination was issued under either case number.

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It is noted that the October 11, 2017 redetermination issued in case number 9757101 includes the following statement: "[T]his (re)determination is being issued as a result of the determination in case 0-009-757-100 involving Not Unemployed 48." However, no such determination was brought to the attention of the undersigned in anticipation of the hearing scheduled for this matter, and, as noted above, Agency records do not show that any such determination was ever issued.

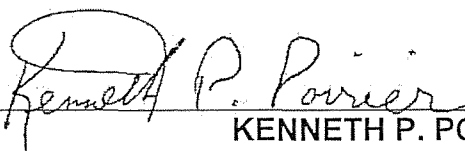
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**The October 11, 2017 redeterminations shall not provide the basis for collection of any restitution or penalties.**

DATED: November 22, 2017

  
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ADMINISTRATIVE LAW JUDGE

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J. Willis	Detroit	November 22, 2017
Name	City Mailed	Date Mailed



## English

**IMPORTANT!** This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document.

**IMMEDIATELY:** If needed, call 1-866-500-0017 for assistance in the translation and understanding of the information in the document(s) you have received.

## Arabic

مجدل ان م. القديس اوفوا / و القديس ايلوؤيس جو كل اطلبنا كاضحيو عت قوؤح ن ع دم دم كادول عم يل ع (قؤئ السول) ثق يثول ا هذه ايو ت حث ا دم دم  
دن سجدل ا اذ ي ف كدراول ا كادول عدل ا دهفت ا ن

[illegible]

Spanish

**¡IMPORTANTE!** Este (s) documento (s) contiene información importante sobre sus derechos, responsabilidades y / o beneficios de compensación por desempleo. Es fundamental que entienda la información de este documento.

**INMEDIATAMENTE:** Si es necesario, llame al 1-866-500-0017 para obtener ayuda en la traducción y comprensión de la información en el documento (s) que ha recibido.

## Mandarin

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## Albanian

E rëndësishme! Ky dokument përmban informacione të rëndësishme për të drejtat, përgjegjësitë dhe / ose përfitimet e papunësisë. Është e rëndësishme të kuptojmë informacionin në këtë dokument.

**Menjëherë:** Nëse është e nevojshme, telefononi 1-866-500-0017 për të ndihmuar në përkthimin dhe kuptimin e informacionit në dokumentet që keni marrë.

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE  
ATTORNEY GENERAL

CADILLAC PLACE, SUITE 9-600  
3030 WEST GRAND BOULEVARD  
DETROIT, MICHIGAN 48202

December 20, 2017

Via Facsimile (517) 241-7326

Michigan Compensation Appellate Commission  
525 West Allegan St., Const. Hall  
Atrium Level, N Tower  
Lansing, MI 48909

Re: *Michael Herzog v Custom Form, Inc.*  
Appeal Nos. 17-023820 & 17-023800  
Case Nos. 9757100 & 9757101

Dear Sir or Madam,

Please find enclosed the Michigan Unemployment Insurance Agency's Claim of Appeal and Attachments 1 and 2 for this matter.

Very truly yours,

Jessica L. Mullen  
Assistant Attorney General  
Labor Division  
(313) 456-2200  
Mullenj2@michigan.gov

JLM:pap  
Enc.

cc: Michael Herzog  
Custom Form, Inc.

MICHIGAN COMPENSATION  
APPELLATE COMMISSION

DEC 20 2017

FILED: msf



STATE OF MICHIGAN  
MICHIGAN COMPENSATION APPELLATE COMMISSION

IN THE MATTER OF:

INVOLVED CLAIMANT:  
MICHAEL HERZOG  
SSN: \*\*\*-\*\*-XXXX

INVOLVED EMPLOYER:  
CUSTOM FORM, INC.

ALJ: KENNETH P. POIRIER

APPEAL NUMBERS:  
17-023820 & 17-023800

CASE NUMBERS:  
9757100 & 9757101

---

UNEMPLOYMENT INSURANCE AGENCY'S CLAIM OF APPEAL

Pursuant to MCL 421.34 and Mich Admin Code, R 792.11418(2), the Michigan Unemployment Insurance Agency timely appeals the November 22, 2017 Orders issued by Administrative Law Judge (ALJ) Kenneth P. Poirier in the above-referenced cases. ALJ Poirier's Orders setting aside the Agency's October 11, 2017 redeterminations are contrary to law.

While the Agency intends to apply for permission to submit written argument at the appropriate time, it offers the following statement providing the basis for appeal.

1. The ALJ's finding that the Agency's redeterminations are void because they are not preceded by written determinations is contrary to recent authority holding that such redeterminations *are not* violative of the MES Act.

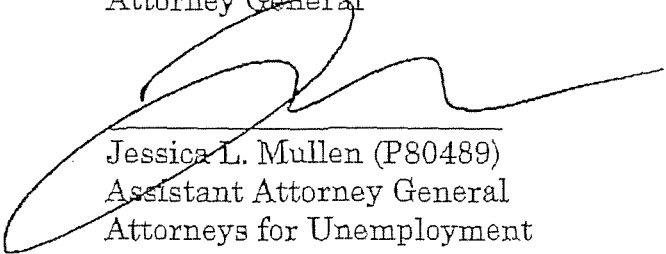
MICHIGAN COMPENSATION  
APPELLATE COMMISSION

DEC 20 2017

2. The ALJ's Orders are based on the Appellate Commission's decision in *Martha R. Fisk v Prostaff Solutions, LLC, Michigan Compensation Appellate Commission*, 15-057282-248256W and 15-057299-248257W (May 23, 2016). (See ALJ Orders, Attach. 1.)
3. The Kent County Circuit Court set aside that Appellate Commission decision in *Michigan Unemployment Ins Agency v Martha Fisk*, unpublished opinion of the Kent County Circuit Court, issued July 3, 2017 (Docket No. 17-00752-AE) (Attach. 2).
4. Moreover, the ALJ's Orders fail to comply with Michigan Administrative Code, Rule 792.11416 requiring that each decision or final order of an ALJ notify the parties of their appeal rights. (See Attach. 1.)

Respectfully submitted,

Bill Schuette  
Attorney General



Jessica L. Mullen (P80489)  
Assistant Attorney General  
Attorneys for Unemployment  
Insurance Agency  
Labor Division  
3030 W. Grand Blvd., Ste.9-600  
Detroit, Michigan 48202  
(313) 465-2200

Dated: December 20, 2017



## PROOF OF SERVICE

The undersigned certifies that on December 20, 2017, a copy of the above document was served on the attorneys of record or parties appearing *in pro per* in the above-captioned case by mailing the same to them at their respective address, with first class postage fully prepaid.



Paula A. Price  
Legal Secretary

# ATTACHMENT 1



Nov. 22. 2017 9:31AM

No. 6868 P. 2/4

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Form 1850

MICHAEL HERZOG  
1127 DEVONSHIRE RD  
GROSSE POINTE PARK, MI 48230

CUSTOM FORM INC  
1546 E 9 MILE RD  
HAZEL PARK, MI 48030

ADMINISTRATIVE LAW JUDGE: KENNETH P. POIRIER

SSN: XXX-XX- [REDACTED]

Docket No.: 17-023820

Case No.: 9757100

ORDER SETTING ASIDE REDETERMINATIONS AS VOID

This is a companion to the order issued in docket number 17-023800, case number 9757101.

On November 3, 2017 the claimant appealed two Unemployment Insurance Agency redeterminations issued on October 11, 2017, under the two case numbers noted above. Collectively the adjudications held that the claimant was ineligible for benefits under the definition of unemployed found at Section 48 from October 9, 2016, through March 4, 2017, and that he was subject to restitution and fraud penalties under Sections 54 and 62 of the Act. Agency records show that no determination was issued under either case number.

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17-023820

Page 1

112217F0052018

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Nov. 22. 2017 9:31AM

No. 6868 P. 3/4

112217F0052020

It is noted that the October 11, 2017 redetermination issued in case number 9757101 includes the following statement: "[T]his (re)determination is being issued as a result of the determination in case 0-009-757-100 involving Not Unemployed 48." However, no such determination was brought to the attention of the undersigned in anticipation of the hearing scheduled for this matter, and, as noted above, Agency records do not show that any such determination was ever issued.


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DATED: November 22, 2017

  
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ADMINISTRATIVE LAW JUDGE

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Name	City Mailed	Date Mailed

17-023820  
Page 2



Nov. 22. 2017 9:31AM

No. 6868 P. 4/4

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## English

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## Arabic

هذه الوثيقة (التي قد تكون أكثر من وثيقة واحدة) تحتوي على معلومات هامة تتعلق بحقوقكم ومسؤولياتكم و/أو مزايا تعويض البطالة. من الضروري أن تفهم المعلومات الواردة في هذه الوثيقة (التي قد تكون أكثر من وثيقة واحدة). **فورا:** إذا لزم الأمر، اتصل بـ 1-866-500-0017 للحصول على مساعدة في الترجمة وفهم المعلومات الواردة في الوثيقة (التي قد تكون أكثر من وثيقة واحدة) التي قد تكون قد تلقيتموها.

## Spanish

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## Mandarin

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## Albanian

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17-023820  
Page 3

112217F0052021

Nov. 22. 2017 9:26AM

No. 6867 P. 2/4

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

Form 1650

MICHAEL HERZOG  
1127 DEVONSHIRE RD  
GROSSE POINTE PARK, MI 48230

CUSTOM FORM INC  
1546 E 9 MILE RD  
HAZEL PARK, MI 48030

ADMINISTRATIVE LAW JUDGE: KENNETH P. POIRIER

SSN: XXX-XX-XXXX

Docket No.: 17-023800

Case No.: 9757101

ORDER SETTING ASIDE REDETERMINATIONS AS VOID

This is a companion to the order issued in docket number 17-023820, case number 9757100.

On November 3, 2017 the claimant appealed two Unemployment Insurance Agency redeterminations issued on October 11, 2017, under the two case numbers noted above. Collectively the adjudications held that the claimant was ineligible for benefits under the definition of unemployed found at Section 48 from October 9, 2016, through March 4, 2017, and that he was subject to restitution and fraud penalties under Sections 54 and 62 of the Act. Agency records show that no determination was issued under either case number.

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17-023800

Page 1



Nov. 22. 2017 9:26AM

No. 6867 P. 3/4

112217F0050003

It is noted that the October 11, 2017 redetermination issued in case number 9757101 Includes the following statement: "[T]his (re)determination is being issued as a result of the determination in case 0-009-757-100 involving Not Unemployed 48." However, no such determination was brought to the attention of the undersigned in anticipation of the hearing scheduled for this matter, and, as noted above, Agency records do not show that any such determination was ever issued.


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17-023800  
Page 2

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**English**

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**Spanish**

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**Mandarin**

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**Albanian**

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17-023800

Page 3



# ATTACHMENT 2

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

MICHIGAN UNEMPLOYMENT INSURANCE  
AGENCY,

Agency-Appellant,

v

MARTHA R. FISK,

Claimant-Appellee,

and

PROSTAFF EMPLOYMENT SOLUTIONS,

Employer-Appellee.

Case No. 17-00752-AE

Hon. Paul J. Sullivan

OPINION & ORDER SETTING  
ASIDE APPELLATE  
COMMISSION'S DECEMBER  
27, 2016 ORDER AND  
REINSTATING ALJ'S  
FEBRUARY 3, 2016 ORDER  
AS FINAL

DEPT. OF AT-  
LABOR DIVISION

JUL 5 2017

Appearances:

Jason Hawkins (P71232)  
Assistant Attorney General  
*Attorneys for Agency-Appellant*  
Labor Division  
PO Box 30217  
Lansing, MI 48909

Martha R. Fisk  
*Claimant-Appellee in Pro Per*  
222 22 Mile Road  
Sand Lake, MI 49343

Prostaff Employment Solutions  
*Employer-Appellee*  
4640 West River Drive NE, Suite F  
Comstock Park, MI 49321

OPINION & ORDER SETTING ASIDE APPELLATE COMMISSION'S DECEMBER  
27, 2016 ORDER AND REINSTATING ALJ'S FEBRUARY 3, 2016 ORDER AS FINAL

Agency-appellant the Michigan Employment Insurance Agency ("the Agency") appeals a decision of the Michigan Compensation Appellate Commission ("the Appellate Commission") regarding claimant-appellee Martha Fisk. An administrative law judge (ALJ) had previously ruled in the Agency's favor in a February 3, 2016 order, finding Ms. Fisk lacked good cause for a delayed appeal. However, that decision was appealed and the Appellate Commission ordered a remand for consideration of additional issues. Following remand, the ALJ ruled on June 13, 2016 that there was no initial "determination", so the Agency's "redeterminations" were invalid and violated Ms.



Fisk's due process rights. The Appellate Commission then affirmed that decision in a December 27, 2016 order, and the Agency filed the present appeal, arguing its decisions were valid and Ms. Fisk was given all of the process due to her.

For the reasons explained below, the Court finds that the Agency's determinations and redeterminations were validly issued and there was no violation of due process. Accordingly, the Appellate Commission's December 27, 2016 order is SET ASIDE, and the ALJ's February 3, 2016 order affirming the Agency's decisions due to the late protest without good cause is REINSTATED AS FINAL.

## I. FACTS AND BACKGROUND

Claimant-appellee Martha Fisk was employed through Prostaff Employment Solutions beginning on or about February 17, 2015, and was placed with Gill Industries to work as a welder. She worked there full-time for about a month and a half. Ms. Fisk also sought unemployment benefits beginning with the week ending February 21, and the Agency paid her benefits on March 10, 2015. In the course of seeking benefits, she made various statements regarding being unemployed and did not notify the Agency of her employment through Prostaff.

As the result of a later audit, the Agency discovered Ms. Fisk's employment during the time she was applying for and receiving benefits. On or about May 12, 2015, the Agency sent a request to Ms. Fisk advising her that her eligibility for benefits in February and March of 2015 was being reviewed and her file was being reviewed for possible misrepresentations. The request sought more information regarding these topics and explained that Ms. Fisk had ten calendar days to respond or else a determination would be made on the available information. No response was received within that time. It was then determined based on the available information that Ms. Fisk was working full-time while receiving benefits, so she was not eligible. On May 27, 2015, the Agency issued a "redetermination" to that effect regarding her ineligibility, and also issued another "redetermination" indicating that Ms. Fisk had intentionally misled or concealed information from the Agency. As a result, it was found that she owed \$1,088 in restitution for benefits improperly received and \$3,731.84 in penalties, for a total amount of \$4,819.84. The redeterminations included descriptions of Ms. Fisk's appellate rights, including reference to a 30-day deadline to challenge the decisions before becoming final.

On August 31, 2015—which was 96 days after the decisions—Ms. Fisk filed a "protest of a determination" related to those decisions. She claimed there was good cause for the delay in her protest because her daughter was taking care of her mail and never gave her the decisions. On September 1, 2015, the Agency responded to Ms. Fisk's protests by entering additional notices of "redetermination", finding that there was no good cause for the late protest, so the May 27, 2015 decisions were found to be final. The September 1 redeterminations also included reference to the 30-day deadline to appeal redeterminations. However, Ms. Fisk did not file a protest of those until October 5, 2015, which was 34 days from the date of the redeterminations. Her second late filing was labeled "appeal of a redetermination", and claimed that the delay in filing that protest was also because her daughter was getting her mail while she was away. The next day, on October 6, 2015, the Agency issued additional notices of "redetermination" finding that there was no good cause for the challenge to that decision.

Ms. Fisk appealed those decisions to an administrative law judge (ALJ), and a hearing was held on February 1, 2016. At the hearing, Ms. Fisk began by testifying regarding her reason for not filing a timely protest to the September 1, 2015 redetermination. She claimed her daughter was getting her mail for her while she was out of town. The mail "kept piling up in her room" and she never saw it until "the last minute". When the ALJ asked Ms. Fisk what dates she was out of town, she responded that she could not remember. The ALJ also asked Ms. Fisk when she first discovered the notice of redetermination, and she responded, "I think it was some time in October."

Ms. Fisk then testified regarding the reasons for the initial failure to file a timely protest to the May 27, 2015 redetermination. She did not recall when or if she received the initial decision that she was ineligible. However, at some point she received additional paperwork that caused her to go to the unemployment office twice.

The ALJ then took testimony regarding the eligibility issue, and Ms. Fisk confirmed her full-time employment with Prostaff Employment Solutions as described above. Finally, brief testimony was taken regarding the issue of fraud or misrepresentation. Ms. Fisk claimed she did not intentionally withhold or misrepresent information to the Agency. The ALJ took the matter under advisement.

In an order dated February 3, 2016, the ALJ found that Ms. Fisk failed to show good cause for the late protest to the Agency's September 1, 2015 redeterminations. The ALJ noted there was a lack of evidence for her claim that she was out of town and did not receive notice. Additionally, the ALJ pointed out that there was a prior late protest in the same case, so this should have caused Ms. Fisk to be especially careful. Accordingly, the Agency's October 6, 2015 decision was upheld due to the untimely request for review.

Ms. Fisk filed a timely appeal of the ALJ's decision to the Appellate Commission. In her appeal, she claimed she deserved a "second chance" at her appeal because she did not know she had the mail and the decisions "were all in [her] daughter's room under a pile of papers and homework[.]" She claimed that this was an "honest mistake". Notably, Ms. Fisk did not raise any procedural challenges, but she merely took issue with the finding that there was no good cause for the late challenges.

On appeal, in an order dated May 23, 2016, the Appellate Commission set aside the ALJ's decision and remanded the matter for further proceedings. The Appellate Commission found that the ALJ should have also addressed whether there was good cause to protest the May 27, 2015 redetermination. The Appellate Commission further questioned whether there was a "determination" before any "redetermination", and stated that the lack of any initial determination would make a redetermination void as a matter of law in light of due process concerns. According to the Appellate Commission, this was a "jurisdictional question". The ALJ was instructed to determine whether there was an initial "determination", and if there was such a determination, then consider whether there was good cause for the failure to timely protest the May 27, 2015 and September 1, 2015 redeterminations.

A hearing on remand was held on June 9, 2016, at which a representative of the Agency testified that the benefit payments are considered determinations. The ALJ took the matter under advisement, and issued a written order on June 13, 2016. The ALJ found that there was no written



determination with appellate rights set forth before the May 27, 2015 redetermination, so it was void along with all of the subsequent determinations. This effectively meant that the initial determination that plaintiff was entitled to benefits remained intact.

The Agency appealed to the Appellate Commission. The Agency argued on appeal that the benefit payment is considered a determination, so this was properly labeled as a redetermination. The Agency also noted that weekly notice of benefit payments are provided that indicate the payment is a determination and protestable.

On December 27, 2016, the Appellate Commission entered a decision stating that the ALJ's findings of fact accurately reflected the evidence and that the law was properly applied to those facts, so the ALJ was affirmed. This timely appeal followed.

## II. STANDARD OF REVIEW

In an appeal from the Appellate Commission, this Court "may review questions of fact and law on the record made before the [ALJ] and the [Appellate Commission] involved in a final order or decision of the Michigan compensation appellate commission, and may make further orders in respect to that order or decision as justice may require . . ." MCL 421.38(1). However, "the court may reverse an order or decision only if it finds that the order or decision is contrary to law or is not supported by competent, material, and substantial evidence on the whole record." *Id.*

## III. LAW AND ANALYSIS

In the present appeal, the Agency argues the Appellate Commission's decision was contrary to law because Ms. Fisk received all of the review that is provided for by law. This section will first set forth some of the relevant provisions of statutes, and then discuss whether the Appellate Commission's holdings are supported by law. Next, because the Court finds the Appellate Commission erred in its holdings, the propriety of the ALJ's initial findings will be discussed.

### A. DETERMINATIONS AND REVIEW UNDER THE MICHIGAN EMPLOYMENT SECURITY ACT

MCL 421.32(a) of the Michigan Employment Security Act ("the Act") sets forth the Agency's basic authority to investigate and make determinations related to claims for unemployment benefits:

Claims for benefits shall be made pursuant to regulations prescribed by the unemployment agency. The unemployment agency shall designate representatives who shall promptly examine claims and make a determination on the facts. The unemployment agency may establish rules providing for the examination of claims, the determination of the validity of the claims, and the amount and duration of benefits to be paid. The claimant and other interested parties shall be promptly notified of the determination and the reasons for the determination. [MCL 421.32(a).]

The Act also provides that "[t]he issuance of each benefit check *shall be considered a determination* by the unemployment agency that the claimant receiving the check was covered during the compensable period, and eligible and qualified for benefits," MCL 421.32(f) (emphasis added).

MCL 421.62 discusses "recovery of improperly paid benefits" after the Agency "determines" that a person is not entitled to benefits and provides additional rules for when the Agency "determines" that an individual "intentionally made a false statement or misrepresentation or has concealed material information to obtain benefits". MCL 421.62. Additionally, MCL 421.54 sets forth sanctions for one who willfully violates or intentionally fails to comply with the Act, in part by providing, "If the unemployment agency determines that an amount has been obtained or withheld as a result of the intentional failure to comply with this act, the unemployment agency may recover the amount obtained as a result of the intentional failure to comply plus damages equal to 3 times that amount," MCL 421.54(a)(i).

Section 32a of the Act sets forth the process of review of determinations and redeterminations. This section provides in relevant part:

(1) Upon application by an interested party for review of a determination, upon request for transfer to an administrative law judge for a hearing filed with the unemployment agency within 30 days after the mailing or personal service of a notice of determination, or upon the unemployment agency's own motion within that 30-day period, the unemployment agency shall review any determination. After review, the unemployment agency shall issue a redetermination affirming, modifying, or reversing the prior determination and stating the reasons for the redetermination, or may in its discretion transfer the matter to an administrative law judge for a hearing. *If a redetermination is issued, the unemployment agency shall promptly notify the interested parties of the redetermination, the redetermination is final unless within 30 days after the mailing or personal service of a notice of the redetermination an appeal is filed with the unemployment agency for a hearing on the redetermination before an administrative law judge in accordance with section 33.*

(2) The unemployment agency may, for good cause, including any administrative clerical error, reconsider a prior determination or redetermination after the 30-day period has expired and after reconsideration issue a redetermination affirming, modifying, or reversing the prior determination or redetermination, or transfer the matter to an administrative law judge for a hearing. A reconsideration shall not be made unless the request is filed with the unemployment agency, or reconsideration is initiated by the unemployment agency with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue.

(3) If an interested party fails to file a protest within the 30-day period and the unemployment agency for good cause reconsiders a prior determination or redetermination and issues a redetermination, a disqualification, or an ineligibility imposed thereunder, other than an ineligibility imposed due to receipt of retroactive



pay, the redetermination, disqualification, or ineligibility does not apply to a compensable period for which benefits were paid or are payable unless the benefits were obtained as a result of an administrative clerical error, a false statement, or a nondisclosure or misrepresentation of a material fact by the claimant. However, the redetermination is final unless within 30 days after the date of mailing or personal service of the notice of redetermination an appeal is filed for a hearing on the redetermination before an administrative law judge in accordance with section 33. [MCL 421.32a (emphasis added).]

Section 33 discusses review of redeterminations and other matters transferred to an ALJ, and provides that in a matter placed before an ALJ in accordance with section 32a, the ALJ must give the interested parties "a reasonable opportunity for a fair hearing". MCL 421.33.

#### B. WHETHER MS. FISK WAS DENIED THE PROCESS SET FORTH IN THE ACT

The Appellate Commission (and the ALJ following remand) held that Ms. Fisk was denied the process due to her under the Act and the Agency lacked jurisdiction because there was never anything labeled a "determination", and the initial findings of ineligibility and misrepresentation were instead labeled "redeterminations". In response, the Agency argues that, at most, this was a mere labeling error in the May 27, 2015 documents, and Ms. Fisk still received the process provided by the act.

After receiving new information in the course of a routine audit, the Agency notified petitioner that her eligibility and the possibility of false statements were under review. After not receiving any timely response to a request for information from her, the Agency issued notices of "redetermination", finding her to be ineligible and finding misrepresentation. When Ms. Fisk filed her untimely "protest of a determination", additional "redeterminations" were issued, keeping the initial findings intact due to the untimeliness of the protest and lack of good cause for the untimeliness. Ms. Fisk then filed an untimely appeal of those redeterminations, and the appeal was rejected due to the Agency finding a lack of good cause for the untimeliness. She then filed a timely appeal of that decision and the ALJ affirmed that redetermination due to the lack of good cause.

Regardless of whether parts of the Agency's May 27, 2015 decisions may have been more properly labeled as "determinations" rather than "redeterminations", Ms. Fisk filed a "protest of determination" with respect to those decisions and the agency issued redeterminations in response to the protest, just as set forth in section 32a of the Act. Ms. Fisk then had 30 days to appeal those redeterminations, and an appeal filed beyond that time could only be considered on a showing of "good cause" for the delay. The agency found no good cause, and petitioner had a full and fair opportunity to dispute this finding in front of the ALJ, who then affirmed the decisions due to the lack of good cause.

Despite the arguable mislabeling of at least portions of the May 27, 2015 decisions, the process received by petitioner is exactly what is contemplated by statute. She was fully put on notice of what was being decided and she was given an opportunity to contest those issues. As Ms. Fisk was warned, her failure to appeal the September 1, 2015 redeterminations within 30 days and failure to have good cause for the delay resulted in the determinations becoming final. After

finding a lack of good cause, the ALJ's initial decision was consistent with the law and due process. The Appellate Commission's directions for remand confused the issues and resulted in a decision inconsistent with the law.

The Appellate Commission stated that there must be a "determination" in order for there to be a redetermination. However, there was a determination when benefits were initially paid and there also were determinations in the May 27, 2015 decisions. Despite some references to "redetermination", they were treated as determinations and Ms. Fisk was given all of the statutory opportunities to challenge them. The Court does not find any authority or logical reason to throw this all out because of the initial labeling as a "redetermination". Indeed, the distinction between what is a "determination" and what is a "redetermination" can be murky and, in some respects, all redeterminations contain new determinations when they change the prior course of a case.

Moreover, it should be noted that Ms. Fisk never took issue with the process afforded to her and still has not. She never alleged any confusion related to the labeling of determination or redetermination, and there is no indication of any prejudice from the labeling. Rather, the Appellate Commission raised this concern on its own and labeled it as a jurisdictional issue. This was without any reference to the payment of benefits being considered.

The case has a somewhat complicated and tortured history, but it is relatively simple in some respects. Regardless of their label, decisions were made by the agency on May 27, 2015. Ms. Fisk protested those decisions, and redeterminations were issued by the Agency on September 1, 2015. The redeterminations found the protest to be untimely and without good cause for the delay. Ms. Fisk failed to appeal those redeterminations within the 30-day time limit and no good cause was found by the agency or the ALJ for the failure to comply with that time limit in challenging the redeterminations. She did not meet the requirements of the statute for reviewing a redetermination, so, as required by the statute, the redeterminations were deemed final.

This is not to say that the Agency handled everything perfectly or that the labeling does not have the potential to cause problems. However, in this case, Ms. Fisk was given the opportunity for the full extent of review under the statute, and the Appellate Commission's decision is not supported by law. Without good cause for her delayed appeal of the September 1, 2015 redeterminations, those redeterminations were final.

### C. WHETHER THE ALJ'S DECISION FINDING NO GOOD CAUSE FOR THE DELAY WAS PROPER

The remaining issue becomes whether anything else should be done with respect to the ALJ's finding of no good cause for the delay in appealing the September 1, 2015 redeterminations. Ms. Fisk had the burden to show good cause for the delayed appeal. Under Mich Admin Code, R 421.270(1):

In determining if good cause exists under sections 32a, 33, and 34 of the act, after the 30-day protest or appeal period has expired, for reconsideration of any prior determination or redetermination or for reopening and review, good cause shall include, but not limited to, any of the following situations:



- (a) If an interested party has newly discovered material facts which, through no fault of the party, were not available to the party at the time of the determination, redetermination, order, or decision. However, a request for reconsideration of a determination or redetermination or for reopening a decision or order made after the expiration of the statutory 30-day period solely for the purpose of evading or avoiding such statutory period is not for good cause.
- (b) If the agency has additional or corrected information.
- (c) If an administrative clerical error is discovered in connection with a determination, redetermination, order, or decision.
- (d) If an interested party has a legitimate inability to act sooner.
- (e) If an interested party fails to receive a reasonable and timely notice, order, or decision.
- (f) If an interested party is prevented from acting sooner due to an untimely delivery of a protest, appeal, or agency document by a business or governmental agency entrusted with delivery of mail.
- (g) If an interested party has been misled by incorrect information from the agency, the office of appeals, or the board of review.

In this case, the ALJ found the lack of documentation concerning and also found that Ms. Fisk should have been particularly careful in keeping track of her mail given that she had just had the protest denied as untimely. Those are perfectly valid reasons and at least partially based on credibility. The Appellate Commission also did not take any issue with the ALJ's findings, but only suggested that further proceedings would be helpful to address whether there was good cause for the delay in challenging the May 27, 2015 decisions and to determine whether there were initial "determinations" not found in the record. There was no error in the ALJ's initial decision on February 3, 2016, and that decision finds ample support in the record.

Given the posture of this case and the fact that the Appellate Commission never disturbed or took issue with the ALJ's findings with respect to the lack of good cause for the delayed appeal of the September 1, 2015 redeterminations, the Court finds it proper to set aside the Appellate Commission's decision and reinstate the ALJ's initial decision as final.

#### *Order*

For the reasons set forth above, the Appellate Commission's December 27, 2016 order is SET ASIDE, and the ALJ's February 3, 2016 decision affirming the Agency's decisions due to the late protest without good cause is REINSTATED AS FINAL.

This is a final order that closes the appeal with this Court.

Dated: July 3, 2017

**PAUL J. SULLIVAN**

Paul J. Sullivan, Circuit Judge (P24139)

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERALCADILLAC PLACE  
3030 WEST GRAND BOULEVARD  
DETROIT, MICHIGAN 48202BILL SCHUETTE  
ATTORNEY GENERALTODAY'S DATE: Wednesday, December 20, 2017TO: Michigan Compensation Appellate CommissionDIVISION/AGENCY: MCACOFFICE PHONE: (800) 738-6372FAX NUMBER: (517) 241-7326

Claim of Appeal

*Michigan Unemployment Ins. Agency v Michael Herzog*

Appeal Nos. 17-023820 &amp; 17-023800

MESSAGE: Case Nos.: 9757100 &amp; 9757101

FROM:

Jessica L. Mullen  
Assistant Attorney General  
3030 W. Grand Blvd., Ste. 9-600  
Detroit, MI 48202

VERIFICATION (SENDER'S) PHONE NUMBER: (313) 456-2200

OUR FAX NUMBER: (313) 456-2201

NUMBER OF PAGES (includes cover sheet): 21

MICHIGAN COMPENSATION  
APPELLATE COMMISSION.

DEC 20 2017

FILED: msf

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January 18, 2018

I was laid off on January 8, 2016. I applied for unemployment in early February, 2016. I was supposed to start getting checks in March of 2016. I went to the Michigan Works office every two weeks during March, April and May. (I sent in documentation to prove this in May, 2017.) I didn't receive my first check until June of 2016. I incurred many bills and large credit card balances during this January to June timeframe. I owed back rent, utility bills and car payments, amongst food bills.

I started working at Custom Form on October 10, 2016. At that time, I was still paying off my back bills. I understood I was entitled to 26 weeks of unemployment checks. After my 26 weeks were up, I no longer called MARVIN as I was then working at Custom Form full time.

I am now at another job and still paying off my credit card balances. Being out of work from mid-January, 2016, until October, 2016, hurt my finances. Getting unemployment from June to November had helped me get back on my feet. I was unemployed for 37 weeks and collected for only 26 weeks. I was unemployed for 21 weeks before I ever got my first check! I needed the money to pay my bills. I have paperwork that says I was approved for 26 weeks.

Enclosed is the letter I received indicating I need to write this letter in order for an appeal to be heard. The fifth paragraph in the letter indicated I must request in writing within 14 days of the letter send to me. I am doing so now.

I feel I deserved the 26 weeks of checks because of the 21 week delay in my getting my first check. How have other unemployed people handled 21 weeks of no income?

I look forward to a positive resolution to this issue. I am unsure if I am to submit my arguments now or sometime in the future. Please advise.

Michael Herzog

Case Number: 0-009-757-100

Applpeal Docket No: 17-023800-255164 w/255163

RECEIVED

JAN 23 2018

MICHIGAN COMPENSATION  
APPELLATE COMMISSION

## IMPORTANT NOTICE

RECEIVED by MSC 9/9/2020 8:16:51 PM

You are involved in an appeal pending before the Michigan compensation appellate commission (Commission). The Commission consists of up to nine members appointed by the Governor and confirmed by the Senate. Each case is assigned to a panel of three commissioners. The Commission is not part of the Unemployment Insurance Agency.

The Notice of Receipt of Appeal (NORA), which is enclosed with this document, indicates the docket number assigned to your case. **You must reference the docket number and claimant's social security number in all communications with the Commission. It is your responsibility to notify us in writing, at the address listed below, if you change your address.**

The NORA indicates if you are represented by an attorney or agent. **If you are no longer represented or your representative has changed, you must immediately notify the Commission in writing providing the name and address of your new representative if applicable.**

MCL 421.34(4); R 792.11420 - allows you to make a written application for oral argument to the Commission within 14 days after the mailed date of the NORA. Your written application shall set forth the reasons for requesting oral argument.

MCL 421.34(4); R 792.11423 - allows you to request, in writing, permission to submit written argument to the Commission within 14 days after the mailed date of the NORA. The Commission may consider a party's written argument only if all parties are represented, or if all parties agree. If by agreement, the agreement must be in writing and **received** by the Commission within 14 days of the mailed date of the NORA. The Commission may also on its own initiative order oral argument or order evidence produced before it.

Applications for oral and written argument must be served on all other parties at the time of filing with the Commission. **Deadlines for filing such applications are indicated at the bottom of this page.**

With or without oral or written argument, your appeal will receive a thorough and independent review.

**A copy of the transcript of the hearing held before the Administrative Law Judge is NOT required to appeal a decision/order with the Commission.** An interested party who wishes to obtain a copy of the transcript may request one, at their cost, by contacting Theresa's Transcription Service at (517) 882-0060. MCL 421.34(10).

After your case is reviewed, you will receive a decision from the Commission including information about your further rights of appeal.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN COMPENSATION APPELLATE COMMISSION

P.O. BOX 30475, LANSING, MI 48909-7975

Telephone: (800) 738-6372 or (517) 284-9300

Fax: (517) 241-7326

Mailed Date: 01/11/2018

Oral/Written Argument Application Deadline: 01/25/2018

*Mailed 1/18/17*



## IMPORTANT NOTICE - Page 2

In addition to reading the rights and requirements outlined on the previous page, please read the following:

The law gives you the right to request permission to present additional evidence to the Commission. You must apply for permission in writing and explain why the Commission should receive the additional evidence. You must also serve a copy of your application to submit additional evidence on all other parties at the time you file your application with the Commission. Michigan Compiled Laws 421.34; MAHS Rules R 792.11421 and R 792.11422.

Although the law allows you to seek permission to present additional evidence, submit written argument, or conduct oral argument, you are not required to do so. In the absence of additional evidence, written argument, or oral argument, the Commission will review your case based upon the record developed by the Administrative Law Judge (ALJ). The ALJ record includes the testimony, exhibits, and any written arguments received by the ALJ.

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN COMPENSATION APPELLATE COMMISSION  
P.O. Box 30475 Lansing, MI 48909-7975

**NOTICE OF RECEIPT OF APPEAL**

Authorized by MCL 421.1, et seq

APPEAL DOCKET NO.: 17-023800-255164 w/255163

Issues:

Date of Referee Order: 11/22/2017

Referee: Kenneth P. Poirier

Date of Appeal: 12/20/2017

Appellant: Agency

Claimant: Michael Herzog

Address: 1127 Devonshire Road  
Grosse Pointe Park, MI 48230-1418

Employer: Custom Form Inc.

Address: 1546 East 9 Mile Road  
Hazel Park, MI 48030-1964

Social Security: [REDACTED]

Registration No: 0435090000

Branch Office: 00--NA

Date: 01/11/2018 jkm

Additional Parties:

Name: Department of Attorney General  
Address: Labor Division  
3030 W. Grand Blvd., 9th Floor  
Attn: Jessica L. Mullen  
Detroit, MI 48202

Name: RICC Grand Rapids  
Address: P. O. Box 169  
Attn: Marianne Holst  
Grand Rapids, MI 49501

Name: UIA Fraud Investigation  
Address: 3024 W. Grand Blvd., Ste. 12-450  
Detroit, MI 48202

RECEIVED by MSC 9/9/2020 8:16:51 PM



STATE OF MICHIGAN  
MICHIGAN COMPENSATION APPELLATE COMMISSION

In the Matter of

MICHAEL HERZOG,

Appeal Docket No.: 17-023820-255163

Claimant,

Social Security No.: XXX-XX [REDACTED]

CUSTOM FORM INC.,

Employer.

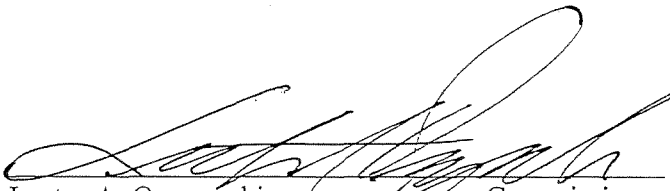
DECISION OF MICHIGAN COMPENSATION APPELLATE COMMISSION

This case is before the Michigan Compensation Appellate Commission on the Unemployment Insurance Agency's appeal of an Administrative Law Judge (ALJ) Order Setting Aside Redetermination as Void issued on November 22, 2017.

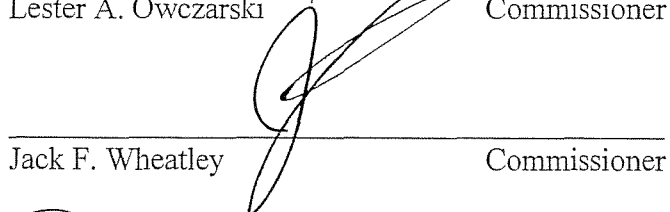
After reviewing the record, we find the ALJ's findings of fact accurately reflect the evidence introduced during the hearing. The ALJ properly applied the law to those facts. It is our opinion that the ALJ's decision should be affirmed.

In accordance with MCL 421.34, we conclude that no modification or alteration of the ALJ's decision is necessary.


The ALJ's decision is hereby AFFIRMED.

  
Lester A. Owczarski

Commissioner

  
Jack F. Wheatley

Commissioner

  
Duncan A. McMillan

Commissioner

MAILED AT LANSING, MICHIGAN

FEB 28 2018

This decision shall be final unless EITHER (1) the Michigan Compensation Appellate Commission RECEIVES a written request for rehearing on or before the deadline, OR (2) the appropriate circuit court RECEIVES an appeal on or before the deadline. The deadline is:

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME. MAR 30 2018

17-023820-255163

Page 2

## English

**IMPORTANT!** This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document.

**IMMEDIATELY:** If needed, call 1-866-500-0017 for assistance in the translation and understanding of the information in the document(s) you have received.

## Arabic

مَدِينَةُ نَم. (كُنْتُ أَرِيفٌ وَأَنَا / وَكَانَ عَائِلٌ وَوُضِعَ كَلَامُ الْفِيلِ) كَانَتْ يَرِيعُ قُورُوحَ نَعْدَمَ كَانُوا نَعْمَ يَلْعَنُ (عَائِلُ السُّوْلُ) فَقِيَّتُ يُولَا هَذِهِ إِي وَكَانَتْ أَحَدُهَا  
نَمَنَسْ جَدَا إِذْ يَفْ تَدْرَاوَلَا تَعْلُولَا مَدِينَتُنَا

(قواتكول) قىيىت كولا يىف تىامول خىملا مەنزىرە مەجرىت يىف كەڭ خاس جەل 1-866-500-0017 ئىلە ئىستىتىكى بىرەنلە جەل اڭلا بىرولغا ئىلە  
 ەستىقۇلەت يىتلا

Spanish

**¡IMPORTANTE!** Este (s) documento (s) contiene información importante sobre sus derechos, responsabilidades y / o beneficios de compensación por desempleo. Es fundamental que entienda la información de este documento.

**INMEDIATAMENTE:** Si es necesario, llame al 1-866-500-0017 para obtener ayuda en la traducción y comprensión de la información en el documento (s) que ha recibido.

## Mandarin

**重要！** 本文件包含有关您的失业补偿权利，责任和/或利益的重要信息。了解本文档中的信息至关重要。

**立即：**如果需要，请致电1-866-500-0017以协助翻译和了解您收到的文件中的信息。

## Albanian

**E rëndësishme!** Ky dokument përmban informacione të rëndësishme për të drejtat, përgjegjësitë dhe / ose përfitimet e papunësisë. Është e rëndësishme të kuptojmë informacionin në këtë dokument.

**Menjëherë:** Nëse është e nevojshme, telefononi 1-866-500-0017 për të ndihmuar në përkthimin dhe kuptimin e informacionit në dokumentet që keni marrë.



STATE OF MICHIGAN  
MICHIGAN COMPENSATION APPELLATE COMMISSION

In the Matter of

MICHAEL HERZOG,

Appeal Docket No.: 17-023800-255164

Claimant,

Social Security No.: XXX-XX [REDACTED]

CUSTOM FORM INC.,

Employer.

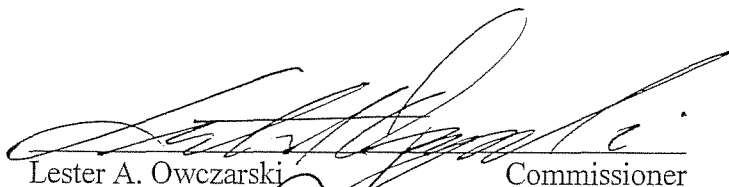
DECISION OF MICHIGAN COMPENSATION APPELLATE COMMISSION

This case is before the Michigan Compensation Appellate Commission on the Unemployment Insurance Agency's appeal of an Administrative Law Judge (ALJ) Order Setting Aside Redetermination as Void issued on November 22, 2017.

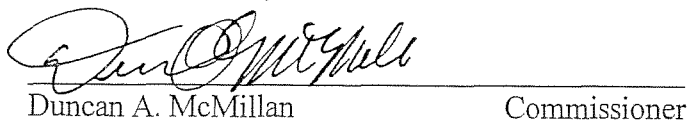
After reviewing the record, we find the ALJ's findings of fact accurately reflect the evidence introduced during the hearing. The ALJ properly applied the law to those facts. It is our opinion that the ALJ's decision should be affirmed.

In accordance with MCL 421.34, we conclude that no modification or alteration of the ALJ's decision is necessary.

The ALJ's decision is hereby AFFIRMED.

  
Lester A. Owczarski Commissioner

  
Jack F. Wheatley Commissioner

  
Duncan A. McMillan Commissioner

MAILED AT LANSING, MICHIGAN

FEB 28 2018

This decision shall be final unless EITHER (1) the Michigan Compensation Appellate Commission RECEIVES a written request for rehearing on or before the deadline, OR (2) the appropriate circuit court RECEIVES an appeal on or before the deadline. The deadline is:

TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME.

MAR 30 2018

17-023800-255164

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**English**

**IMPORTANT!** This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document.

**IMMEDIATELY:** If needed, call 1-866-500-0017 for assistance in the translation and understanding of the information in the document(s) you have received.

**Arabic**

مهمنا انكم تفهموا / و افهموا كل ما في هذا التوضيح من حقوق و مسؤوليات و منافع. من المهم ان تفهموا المعلومات في هذا التوضيح.

(قوائمنا) تفهموا / تفهموا كل ما في هذا التوضيح من حقوق و مسؤوليات و منافع. من المهم ان تفهموا المعلومات في هذا التوضيح.

**Spanish**

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**Mandarin**

**重要！** 本文件包含有关您的失业补偿权利，责任和/或利益的重要信息。了解本档中的信息至关重要。

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**Albanian**

**E rëndësishme!** Ky dokument përmban informacione të rëndësishme për të drejtat, përgjegjësitë dhe / ose përfitimet e papunësisë. Është e rëndësishme të kuptojmë informacionin në këtë dokument.

**Menjëherë:** Nëse është e nevojshme, telefononi 1-866-500-0017 për të ndihmuar në përkthimin dhe kuptimin e informacionit në dokumentet që keni marrë.



# **APPENDIX 8**

# Office of the Auditor General

## Performance Audit Report

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### Claimant Services

Unemployment Insurance Agency, Talent Investment Agency  
Department of Talent and Economic Development

April 2016

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State of Michigan Auditor General  
Doug A. Ringler, CPA, CIA



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The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

*Article IV, Section 53 of the Michigan Constitution*

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**OAG**  
Office of the Auditor General

## Report Summary

### Performance Audit

### Claimant Services

### Unemployment Insurance Agency, Talent Investment Agency, Department of Talent and Economic Development

Report Number:  
641-0318-14

Released:  
April 2016

The Unemployment Insurance Agency (UIA) helps jobless workers and their families by providing up to 20 weeks of regular unemployment insurance (UI) benefits while they seek new employment. UIA reported that it received 607,652 new claims and paid UI benefits totaling approximately \$1.1 billion to 370,980 unduplicated claimants in fiscal year 2014. UIA's fiscal year 2014 administrative expenditures totaled approximately \$155.6 million.

Audit Objective			Conclusion
Objective #1: To assess the clarity and comprehensiveness of UIA's communications with UI claimants.			Moderately clear and comprehensive
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
UIA needs to improve its efforts to obtain and/or consider supporting information and provide claimants with the facts and rationale when it determines that claimants provided false or misleading information. Adjudicating these issues may result in reimbursement, penalties, and criminal prosecution. Also, these improvements will help claimants better understand the allegations against them to make informed decisions on their next course of action ( <a href="#">Finding #1</a> ).	X		Agrees
UIA needs to continue to enhance existing and explore new social media methods and processes for communicating with current and prospective UI claimants. Accessible and comprehensive communications help ensure that claimants timely understand the various requirements for receiving UI benefits ( <a href="#">Finding #2</a> ).		X	Agrees
UIA did not effectively and efficiently process claimant and employer mail that was returned undeliverable and without a forwarding address. Doing so resulted in increased printing, mailing, and workload costs of its mailroom personnel, claims examiners, and others. Also, claimants and employers did not receive important communications from UIA ( <a href="#">Finding #3</a> ).		X	Agrees
UIA did not ensure that employers posted notices informing workers that they were covered for UI benefits. Also, more accurate instructions could have reduced the number of untimely claims, including the 45,700 ineligibility determinations issued between October 1, 2013 and February 26, 2015, for failing to apply in a timely manner ( <a href="#">Finding #4</a> ).		X	Agrees



Findings Related to This Audit Objective (Continued)	Material Condition	Reportable Condition	Agency Preliminary Response
UIA should seek regular feedback from claimants to evaluate their satisfaction with UIA's service delivery systems, processes, and personnel and to timely identify and address issues requiring management's attention ( <u>Finding #5</u> ).		X	Agrees

Audit Objective			Conclusion
Objective #2: To assess UIA's efforts to ensure compliance with the U.S. Department of Labor's quality and timeliness standards related to UI claims processing.			Moderately effective
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
UIA did not consistently meet federal performance standards related to initial benefit payments, nonmonetary determination processing, and appeals processing. In addition, UIA needs to improve the quality of its separation-related nonmonetary determinations. These conditions resulted in delayed benefit payments and improper benefit payments and claims denials, which, if left uncorrected, could result in the loss of federal administrative grant funding ( <u>Finding #6</u> ).		X	Agrees

Audit Objective			Conclusion
Objective #3: To assess UIA's efforts to identify claimants likely to exhaust their UI benefits and refer them to appropriate reemployment services.			Moderately effective
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
UIA did not periodically evaluate whether its Worker Profiling and Reemployment Services (WPRS) system effectively reduced program participants' length of unemployment and the amount of UI benefits paid. Also, UIA did not periodically review and update its profiling model to accurately identify the claimants who were most likely to exhaust their regular UI benefits before returning to work. Annual savings to Michigan with an effective WPRS system could total over \$11.7 million ( <u>Finding #7</u> ).		X	Agrees
UIA did not refer some claimants who met UIA's mandatory reemployment service participation criteria to the Michigan Workforce Development Agency for reemployment services. Also, UIA did not take sufficient action to reduce the number of claimants that it excused, without consequence, from mandatory participation in reemployment services after missing their scheduled appointment. Some claimants may not have returned to work as soon as otherwise possible, resulting in lost wages to the claimants and increased costs to the UI program ( <u>Finding #8</u> ).		X	Partially agrees

A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: [www.audgen.michigan.gov](http://www.audgen.michigan.gov)

Office of the Auditor General  
201 N. Washington Square, Sixth Floor  
Lansing, Michigan 48913

Doug A. Ringler, CPA, CIA  
Auditor General

Laura J. Hirst, CPA  
Deputy Auditor General



# OAG

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Doug A. Ringler, CPA, CIA  
Auditor General

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April 21, 2016

Ms. Sharon A. Moffett-Massey, Director  
Unemployment Insurance Agency  
Cadillac Place  
Detroit, Michigan  
and  
Mr. Steven Arwood, Director  
Department of Talent and Economic Development  
300 North Washington Square  
Lansing, Michigan

Dear Ms. Moffett-Massey and Mr. Arwood:

I am pleased to provide this performance audit report on Claimant Services, Unemployment Insurance Agency, Talent Investment Agency, Department of Talent and Economic Development.

We organize our findings and observations by audit objective. Your agency provided preliminary responses to the recommendations at the end of our fieldwork. The *Michigan Compiled Laws* and administrative procedures require an audited agency to develop a plan to comply with the recommendations and submit it within 60 days of the date above to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during this audit.

Sincerely,

Doug Ringler  
Auditor General





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## AUDIT OBJECTIVES, CONCLUSIONS, FINDINGS, AND OBSERVATIONS



## COMMUNICATIONS WITH UI CLAIMANTS

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### BACKGROUND

The Unemployment Insurance Agency (UIA) has four remote interactive claim centers. One center takes unemployment insurance (UI) claims and answers claimant questions over the telephone. The other three centers process incoming correspondence, process and adjudicate\* claims, and complete other claims-related tasks. Also, UIA has 15 problem resolution offices located throughout the State that provide claimants with access to telephones and computers for filing their UI claims and that offer personal assistance to claimants on UI-related matters. In addition, UIA has a designated team that answers claimant questions sent to UIA electronically.

In October 2013, UIA implemented the benefit section of its new computer system, Michigan Integrated Data Automated System (MiDAS). MiDAS provides for more efficient processing of claims than UIA's predecessor system. UIA simultaneously upgraded its Michigan Web Account Manager (MiWAM), which allows claimants to file UI benefit claims, monitor the status of claims, file appeals, and respond to fact finding requests through the Internet.

### AUDIT OBJECTIVE

To assess the clarity and comprehensiveness of UIA's communications with UI claimants.

### CONCLUSION

Moderately clear and comprehensive.

### FACTORS IMPACTING CONCLUSION

- UIA effectively used many of the communication strategies for claimants recommended in the U.S. Department of Labor's (USDOL's) UI Claimant and Employer Message Toolkit.
- UIA provided claimants with multiple avenues for filing UI claims, completing their biweekly certifications, and communicating with UIA.
- Instructions provided to claimants when applying and certifying for UI benefits were generally clear and comprehensive.
- Most UIA form letters sent to claimants were clear and comprehensive.
- Material condition\* related to obtaining the necessary information for accurately adjudicating select claims and providing claimants with the reasons supporting UIA's (re)determinations.

\* See glossary at end of report for definition.

- Reportable condition\* related to enhancing methods and processes for communicating with claimants.
- Reportable condition related to ineffective and inefficient processing of undeliverable claimant and employer mail.
- Reportable condition related to ensuring that employers posted notices and provided workers with required information regarding unemployment benefits.
- Reportable condition related to not obtaining service satisfaction information from claimants.

\* See glossary at end of report for definition.



**FINDING #1**


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**UIA needs improvement in making and communicating (re)determinations of intentional misrepresentation.**


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UIA needs to improve its efforts to obtain and/or consider supporting information and provide claimants with the facts and rationale for claims identified as including potentially false or misleading information (intentional misrepresentation\*).

Accurately adjudicating issues of intentional misrepresentation is crucial because of the statutory benefit payback provisions and significant penalties, along with the potential for criminal prosecution. Also, claimants need to know how UIA arrived at its conclusions to allow claimants to make informed decisions on whether to protest or appeal the (re)determinations.

Between October 1, 2013 and March 31, 2015, UIA issued 60,324 (re)determinations finding intentional misrepresentation on 47,350 claims. We reviewed 60 of these (re)determinations and noted:

- a. UIA could have improved its efforts to contact 22 claimants who did not respond to UIA's original requests for information related to 46 (76.7%) (re)determinations. Also, UIA did not inform claimants that, absent new information provided by another source, failure to respond to the requests for information would result in a finding of intentional misrepresentation. Instead, the requests stated that failure to respond would result in a (re)determination based on available information. UIA assessed the 22 claimants statutorily required penalties totaling \$184,795.

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UIA could have improved efforts to contact 22 claimants who did not respond to UIA's original requests for information related to 46 (re)determinations finding intentional misrepresentation.

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The United States Postal Service (USPS) returned 2 (9.1%) of the 22 requests as undeliverable. UIA informed us that it did not resend the returned requests to claimants because the claimants' deadlines to respond to the requests, which would not change with remailing, would have already passed. Also, UIA did not open 5 (10.9%), 13 (28.3%), and 3 (6.5%) of the 46 misrepresentation issues for 6 months to 1 year, 1 to 2 years, and more than 2 years, respectively, after the last UI benefit payments for the related claims. Because of these significant time lags, some of the requests for information related to the intentional misrepresentations that UIA sent electronically may also have gone undeliverable and contributed to the high nonresponse rate.

Although UIA's attempts to obtain claimant information met State and ET Handbook 301, 5th Edition, requirements, additional attempts to contact these claimants would have better ensured that the claimants were provided adequate due process prior to finding intentional misrepresentation.

\* See glossary at end of report for definition.

- b. UIA did not obtain and/or consider sufficient information to support some adjudications made for claimants who responded to UIA's requests for information related to issues of intentional misrepresentation.

UIA asked claimants only two questions on the requests for information:

- (1) Did the claimants intentionally provide false information to obtain benefits that they were not entitled to receive? (A "yes" or "no" answer was required.)
- (2) Why did the claimants think they were entitled to benefits?

UIA determined intentional misrepresentation existed when claimants either answered "yes" to the first question, where a "yes" appears to be an admission, or answered "no" to the first question but checked the box for 1 of 3 of the 7 non-"other" responses to the second question. Although some of these responses appeared to provide sufficient proof of intentional misrepresentation, others did not. For example, responding "no" to the first question and that one needs the money in response to UIA's second question may not, in itself, adequately support an intentional misrepresentation (re)determination.

The Handbook states that adjudicators should closely examine all of the facts related to (re)determinations of intentional misrepresentation. Examples of relevant facts to consider in making the (re)determinations include claimants' education levels, language barriers, and prior claims experiences.

- c. UIA did not include the reasons for, or facts that led to, the written (re)determinations of intentional misrepresentation, when UIA contacted the claimant, as required by Title 20, Part 602, Appendix A of the *Code of Federal Regulations (CFR)* and Section 421.32(a) of the *Michigan Compiled Laws*. Instead, the (re)determinations only stated that the claimants' actions indicated that the claimants intentionally misled and/or concealed information to obtain benefits that the claimants were not entitled to receive.

## RECOMMENDATION

We recommend that UIA improve its efforts to obtain supporting information and provide claimants with the facts and rationale for (re)determinations of intentional misrepresentation.



**AGENCY  
PRELIMINARY  
RESPONSE**

UIA provided us with the following response:

*The UIA agrees that (re)determinations finding intentional misrepresentation should include the facts, supporting information, and the reason(s) on which the (re)determination is based. In 2015, the UIA began a review of its intentional misrepresentation (re)determinations processes. As a result, intentional misrepresentation matters are investigated, reviewed, and determined by staff to ensure the inclusion of relevant facts, reason(s), and conclusions within these (re)determinations. The UIA continuously reviews and implements improvements in its system in order to better serve customers.*

## FINDING #2

### Enhanced communications with claimants are needed.

UIA did not answer 234,901 (89.1%) of 263,726 calls made to its call center.

UIA needs to continue to enhance existing and explore new social media\* methods and processes for communicating with current and prospective UI claimants. Suggested enhancements include:

- a. Continue to improve claimants' ability to reach UIA's call center.

Since 2011, UIA has made significant upgrades to its call center telephone system that provide for greater oversight and management of call center staff, the ability to offer a limited number of claimants the option of receiving a call back from UIA rather than waiting on hold, and other benefits. Although these enhancements reduced total claimant hold times and call lengths, many calls continued to go unanswered. For example, UIA did not answer 234,901 (89.1%) of 263,726 calls made to its call center during business weeks ended August 22, 2014 and September 22, 2014. Also, callers abandoned 8,333 (28.9%) of the 28,825 calls while waiting on hold for a UIA representative. Because the number of calls greatly exceeded the number of claimants during these weeks, it is likely that some individual claimants made multiple call attempts.

Claimants' inability to reach UIA's call center was a significant frustration echoed by many claimants who responded to our claimant satisfaction survey (presented as supplemental information in this report).

- b. Explore the feasibility and usefulness of using social media (e.g., Facebook, Twitter, and LinkedIn) to communicate important UI-related information to the public.

USDOL's UI Claimant and Employer Message Toolkit promotes the use of social media as a best practice for efficiently disseminating content and maximizing impact with broad audiences. UIA could utilize social media to educate claimants about available UI benefit programs, significant program requirements, common errors made by claimants when applying and certifying for UI benefits, and other issues.

UIA could also use social media to help address some of the findings in this report. For example, UIA could use it to monitor and improve claimant satisfaction (Finding #5); promote the use of its electronic communications, which would reduce the burden on its more expensive call centers (part a. of this finding); and

\* See glossary at end of report for definition.



better inform the public of the timeliness requirements for applying for UI benefits (Finding #4).

- c. Improve the selection of and access to claimant webcasts (videos).

UIA's Web site provides links to a variety of webcasts on topics directly impacting UIA claimants. On various occasions from March through May 2015, we attempted to view many of these webcasts. However, none of the webcasts would play. Also, UIA did not have any webcasts related to MiWAM, its automated claims processing system, which went live approximately 19 months earlier.

USDOL's UI Claimant and Employer Message Toolkit promotes claimant webcasts for communicating important UI-related information to claimants because they are easier to digest than straight text documents.

- d. Improve its requests for information by specifying the time periods associated with the employment-related questions included in the requests for information sent to claimants.

*Michigan Administrative Code R 421.121(2)* requires employers to report their quarterly wages to UIA within 25 days of the end of their respective fiscal year quarters. Four months after the end of each calendar quarter, UIA matches the employer-reported wages with the wages reported by UI claimants during their biweekly benefit certifications. Claimants with wage differences exceeding established thresholds are identified for further review. UIA sends these claimants a request for information regarding their current employment status.

Because significant time often elapses before UIA sends these information requests, it is often not possible for UIA to know if the claimants' reported employment-related information is relevant to its review. Identifying employment status during the time period of the potential wage underreporting can help UIA ensure that the employment-related information is relevant to its review.

## RECOMMENDATION

We recommend that UIA continue to enhance existing and explore the feasibility of adding social media methods and processes for communicating with current and prospective UI claimants.

**AGENCY  
PRELIMINARY  
RESPONSE**

UIA provided us with the following response:

*The UIA agrees that continued enhancement to existing social media methods and communications regarding prospective UI claimants is needed.*

*With respect to the numbers used by the Office of the Auditor General (OAG) regarding the call center, these are Automated Number Identification (ANI) results, which identify call attempts and not true number of unique callers. For example, for the weeks ended August 22, 2014 and September 20, 2014, there were 58,212 "total unique calls." Of these "total unique calls," the UIA did not answer 28,131 (nearly 50%) of the 58,212.*

*During the same period for the business weeks ended August 21, 2015 and September 19, 2015, the total unique calls were 33,688. Of these "total unique calls," UIA did not answer 7,160 (21%) of the 33,688 "total unique calls." This is an improvement of 29% over the past year. In the past year, UIA has decreased the number of abandoned calls by 15%.*

*The UIA call center is not the sole source for customers to reach UIA. The employers/claimants can e-mail the UIA through their MiWAM accounts or claimants can visit their local problem resolution offices.*

*Social media is an important tool that the UIA utilizes to increase its reach to customers and communicate important information regarding unemployment insurance. The UIA, through the Talent Investment Agency (TIA) social media sites, communicates important UI-related information to the public such as available UI benefit programs, requirements, events, best practices, and other news of interest or assistance to claimants. The TIA Twitter and Facebook pages are also used to direct UIA customers to the appropriate resources on the UIA Web site as well as monitor and answer customer inquiries.*

*The UIA is updating all webcasts available on the public UIA Web site. New videos will appear throughout the remainder of 2016.*

*To further enhance the UIA reach to customers, an up-to-date e-mail listserv for UIA customers with a MiWAM account has been created in order to forward updates and messages regarding unemployment insurance.*



**FINDING #3****Improvements are needed in returned mail processes.**

UIA did not effectively and efficiently process claimant and employer mail that was returned undeliverable and without a forwarding address. Doing so resulted in increased printing, mailing, and workload costs of its four mailroom personnel, claims examiners, and others. Also, claimants did not receive important information related to their eligibility for, amount of, and duration of UI benefits, and employers did not receive information directly impacting their unemployment tax liabilities.

UIA estimated that the USPS returned 451,000 undeliverable mail items to UIA in 2014 while UIA expended approximately \$3.8 million for postage.

UIA Manual Section 7935 requires UIA mailroom personnel to scan returned mail containing any of nine benefit-related forms into its electronic document repository (FileNet) when the mail does not contain a forwarding address. UIA claims examiners must call claimant addressees only to obtain their current addresses. Claimants are held ineligible for benefits when they cannot be reached or do not return messages left by UIA claims examiners within 48 hours. UIA does not inactivate invalid claimant or employer addresses to prevent sending additional mailings to them. Returned mail without a forwarding address or that does not require scanning is shredded without additional review.

Of 50 randomly selected returned mail items (46 employer addressees and 4 claimant addressees) discarded for shredding on April 3, 2015, UIA mailroom personnel inappropriately discarded without required processing 14 (28.0%) mail items for 13 unique addressees. Mailroom personnel did not appropriately process 2 of the 14 mail items because the specific forms included therein (and one other form) were mistakenly excluded from the preprinted list of forms to be pulled for additional processing. Additional analysis of the 13 unique addressees and 2 judgmentally selected employers with returned mail not requiring scanning disclosed:

- a. Seven addressees were active employers that did not receive either UIA benefit-related mail or both tax and benefit-related mail. There was no indication that UIA tried to obtain a valid mailing address for 6 (85.7%) of the 7 employers. However, with minimal effort, we identified current mailing addresses for 4 (57.1%) of the employers whose addresses had changed up to seven years earlier. Two (28.6%) of these employers had accumulated delinquent UI taxes, interest, and penalties totaling over \$79,000. UIA sent one of these employers 129 undeliverable mail items containing tax notices, tax liens, benefit determinations, and other issues and significant amounts of undeliverable mail to the other employers.

- b. Three addressees were for employers that legally dissolved and/or discontinued their operations from 1 to 5 years earlier. Another employer addressee was no longer doing business in Michigan but had not filed the necessary paperwork to officially dissolve the business. UIA continued to send correspondence to the defunct employers at their last known addresses. For example, UIA sent 27 pieces of benefit-related mail to one of the employers after UIA officially closed the employer's tax account in September 2014.
- c. Two addressees were UIA claimants with open actions that will result in UIA sending additional undeliverable mail to the claimants. One of the claimants died approximately two years ago. From October 21, 2014 through May 4, 2015, UIA sent the estate of the deceased claimant 114 monthly statements to collect a \$1,184 benefit overpayment resulting from an issue that UIA opened and adjudicated against the claimant after the claimant's death for failing to respond to UIA's fact finding questionnaire.

UIA was not able to provide any explanation as to why it continued to send mail to undeliverable addresses.

## RECOMMENDATIONS

We recommend that UIA attempt to identify the correct mailing addresses for all claimants and employers when mail is returned undeliverable and without a forwarding address and evaluate the need for additional mailings pending this identification.

We also recommend that UIA process undeliverable mail in accordance with its written policy.

## AGENCY PRELIMINARY RESPONSE

UIA provided us with the following response:

*The UIA agrees that "returned mail" remains a challenge for the UIA. For this audit, the OAG estimated that the USPS returned 451,000 pieces of mail during calendar year 2014. When compared against the volume of mail received by the UIA during calendar year 2014, less than 8% of the mail had been returned.*

*The UIA validates addresses against USPS records. UIA will reinforce existing procedures that require staff to update and/or verify addresses when a piece of returned mail includes a "forwarding address" as supplied by the USPS.*



*Further, UIA intends to develop and institute a quality assurance lead staff member charged with, among other things:*

*Identifying (a) qualitative and quantitative issues associated with returned mail; (b) commonalities among returned mail issue(s); and (c) "priority" forms where the return of which may require further action; (d) low priority forms where the return of which may be destroyed; (e) best practices used in both the private and public sectors; and (f) exploration of alternate strategies and approaches to "find" proper mailing addresses when items are returned as undeliverable.*

*Finally, the UIA will continue to review, revise, and reinforce its returned mail procedures.*

**FINDING #4**


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**UIA did not ensure that employers posted required notices or provided workers with required UI information.**

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UIA did not ensure that employers posted notices informing workers that they were covered for UI benefits and provided them with accurate instructions on what to do and where to go to file a claim and register for work to receive UI benefits.

From October 1, 2013 through February 26, 2015, UIA issued approximately 45,700 determinations holding claimants ineligible for UI benefits for failing to apply in a timely manner. UIA did not consider claimants' failure to know UIA's filing deadline to be a good cause for late filing. We could not determine how many of the late-filing claimants were unaware of the filing deadline. With improved information, UIA could help minimize the number of ineligible claimants because of untimely applications. Also, it would ease UIA's related administrative burden while simultaneously getting UI benefits to newly unemployed individuals more quickly.

Federal regulation 20 *CFR* 602, Appendix A, requires employers to give their employees information and instructions concerning their potential rights to benefits and how to file a benefit claim. Accordingly, UIA provided employers with posters to display and required employers to provide a form UIA 1711 or an equivalent written notice telling employees when they must file (first week of unemployment), how and where to file, and that they must register for work for UI benefits. The Appendix states that if employers post the required information, UIA must ensure that it is done conspicuously and at all times. UIA informed us that it rarely sees claimants with form UIA 1711.

Form UIA 1711, last revised in June 2012, stated that claimants could file their benefit claims online from 7:00 a.m. to 7:00 p.m. Monday through Saturday. However, since October 1, 2013, claimants have been able to file their benefit claims online 24 hours a day Sunday through Saturday. UIA informed us that other priorities have precluded it from updating form UIA 1711.

**RECOMMENDATIONS**

We recommend that UIA ensure that employers post notices informing workers that they are covered for UI benefits.

We also recommend that UIA ensure that employers provide workers with accurate instructions on how to file a claim and register for work to receive UI benefits.

**AGENCY  
PRELIMINARY  
RESPONSE**

UIA provided us with the following response:

*The UIA agrees that employers should post all required notices. The Employer Handbook (available online free of charge) includes both a link to the required notice and a copy of the actual notice, as well as in Form UIA 1252 - Employer*



Online Filing Kit. With more than 200,000 employers located throughout the State of Michigan, it is simply not possible for the UIA to conduct 200,000 on-site visits for purposes of "ensur[ing] that employers post [the required] notices . . . ." However, the UIA's Field Audit Division has updated its field audit handbook, which requires staff to verify compliance with R. 105(1) as a part of the UIA's random audit processes; thus, a portion of the state's employers will be reviewed for posting compliance. Additionally, the UIA has revised Form UIA 1711 - Unemployment Compensation Notice to Employees and updated the information.

Further, the UIA holds employer and unemployed worker seminars throughout the year and will provide copies of the notice in the literature.

Finally, the UIA participates in several programs intended to facilitate the unemployment process by bringing the employer, affected workers, and UIA staff together at the same time and place. These programs are known as Rapid Response and Worker Orientations.

**FINDING #5****UIA needs to obtain and utilize claimant satisfaction data.**

UIA should seek regular feedback from claimants to evaluate their satisfaction with UIA's service delivery systems, processes, and personnel and to timely identify and address issues requiring management's attention.

UIA's mission\* is to provide the highest quality UI services to ensure the economic growth of Michigan's workers and employers. Consistent with its mission, UIA identified customer centricity as one of its core values to guide the perspective and actions of its employees. A widely used measure of service quality, which also aligns with UIA's customer centric mission and values, is customer satisfaction.

In its 2014 Putting Citizens First report that surveyed approximately 17,000 citizens across 15 states (including Michigan) and interviewed government leaders, the McKinsey Center for Government identified regular customer satisfaction assessment as a critical tool for focusing employees on the importance of fulfilling customer expectations and providing management with data driven insights into the parts of their operations that are working well and those requiring improvement.

UIA last completed a narrow-scoped claimant satisfaction survey in 2010. Also, UIA obtained claimant feedback via a brief seven-question comment card available in its problem resolution offices. However, UIA informed us that it did not compile and analyze the information contained on the comment cards. The majority of UIA/claimant interactions occur online or on the telephone, which presents UIA with a relatively inexpensive way to obtain claimant feedback while it is still fresh in the minds of the claimants. For example, UIA could survey claimants in MiWAM immediately after they complete their UI benefit application or first biweekly certification or at any other point when the claimants interact with MiWAM. Similar opportunities exist for claimants who complete their UI claims-related activities over the telephone.

We conducted a mail and online survey of 500 claimants (see supplemental information). Our survey identified significant dissatisfaction with the protest and appeals processes. If UIA conducted similar surveys and identified the root cause of the claimants' dissatisfaction, UIA could take timely action to correct deficiencies in the systems, processes, and/or personnel and improve the overall quality of its services.

**RECOMMENDATION**

We recommend that UIA regularly seek feedback from claimants to evaluate their satisfaction with UIA's service delivery systems, processes, and personnel and to timely identify and subsequently address issues requiring management's attention and action.

\* See glossary at end of report for definition.



**AGENCY  
PRELIMINARY  
RESPONSE**

UIA provided us with the following response:

*The UIA agrees that there is a need to gauge its customer satisfaction regarding the services it provides. The UIA also acknowledges there are opportunities to improve customer service by utilizing tools such as online surveys and surveying customers following unemployment worker and employer seminars.*

*UIA has been making strides in obtaining feedback from its customers by providing customers with comment cards after obtaining service at one of its problem resolution offices.*

*In June 2015, the UIA began an effort to gauge customer satisfaction by launching an ongoing Feedback Survey on its public Web site. Staff review and analyze customer feedback quarterly to determine problem areas and gauge customer satisfaction and understanding of the UI system. Claimant concerns are forwarded to the appropriate unit to timely address and resolve.*

*The online survey measures satisfaction with customer service and elicits suggestions for improvement. The survey is periodically revised to provide additional opportunities for customer feedback. Customers are encouraged to take the online survey by staff, through flyers in the problem resolution offices, social media, and messages included with several UIA communications.*

## COMPLIANCE WITH USDOL STANDARDS

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**BACKGROUND**

UI Performs is USDOL's performance management system for the overall UI program. UI Performs aims to ensure increasingly effective, consistent, and efficient service to workers and employers. The core measures within UI Performs monitor key activities that have uniform national acceptable levels of performance.

**AUDIT OBJECTIVE**

To assess UIA's efforts to ensure compliance with USDOL's quality and timeliness standards related to UI claims processing.

**CONCLUSION**

Moderately effective.

**FACTORS  
IMPACTING  
CONCLUSION**

- UIA has made and continues to make significant changes to its business processes, which resulted in meaningful improvements in its performance relative to federal performance standards.
- UIA has aggressively worked to reduce its backlogs, which has negatively impacted its ability to meet federal performance standards.
- Reportable condition related to not meeting or not consistently meeting federal performance standards.



**FINDING #6****UIA did not meet various federal claims processing performance standards.**

UIA did not consistently meet federal performance standards related to initial benefit payments, nonmonetary determination\* processing, and appeals processing. In addition, UIA needs to improve the quality of its separation-related nonmonetary determinations. These conditions resulted in delayed benefit payments and improper benefit payments and claims denials, which, if left uncorrected, could result in the loss of federal administrative grant funding.

In August 2011, the USDOL's Employment and Training Administration (ETA) designated UIA as "marginally at risk" for consistently failing to meet ETA's UI Performs core measures related to first payment timeliness and lower authority appeals processing timeliness. In 2014, after UIA failed to sufficiently improve its performance, ETA designated UIA as "at risk" and began intensive efforts to assist UIA with improving its performance. As of June 30, 2015, UIA was still designated as at risk. We noted:

- a. UIA did not consistently meet the UI Performs core measure that required UIA to make at least 87% of all initial benefit payments within 21 days of the week ending date of the first compensable week of a claimant's benefit year\*. UIA's monthly performance was below standard for 14 (66.7%) months during the 21-month period ended June 30, 2015. UIA's performance ranged from a low of 67.4% in February 2014 to a high of 91.0% in December 2014.
- b. UIA did not meet the UI Performs core measure that required the completion of at least 80% of nonmonetary determinations (both separation and non-separation issues) within 21 days of their issue detection dates. For the quarter ended September 30, 2011, UIA completed only 53.0% and 38.6% of its separation and non-separation determinations, respectively, within 21 days. For the quarter ended March 31, 2015, UIA had increased its timely completion of separation and non-separation determinations to 72.2% and 74.4%, respectively.
- c. Michigan did not meet the UI Performs core measure that required the average age of pending lower authority appeals to be 30 days or less. Since being designated marginally at risk, the average age of pending lower authority appeals has steadily increased from 34 days for the quarter ended September 30, 2011 to 94 days for the quarter ended June 30, 2015. For the quarter ended June 30, 2015, Michigan was the second lowest performing state relative to this core measure.

\* See glossary at end of report for definition.

- d. UIA did not earn consistently high scores for the quality of its separation-related nonmonetary determinations. Nonmonetary determinations are critical for determining claimants' past, present, or future eligibility for UI benefits and impact the rights of both claimants and employers. Therefore, it is imperative that UIA make these determinations only after obtaining, or attempting to obtain, all the facts relevant to the issue at hand.

As shown in the chart below, during the five most recently completed quarters, UIA met the UI Performs core measure for both separation and non-separation issues, which required a quality score of 95 or higher on at least 75% of the nonmonetary determinations sampled and reviewed. However, the quality of its separation-related determinations significantly lagged that of its non-separation related determinations, was inconsistent from quarter to quarter, and was only 1.0% above the minimum acceptable performance level during the most recently completed quarter:

Percentage of Determinations Scoring 95 Points or Higher

Nonmonetary Determination Type	For the Quarter Ended				
	June 30, 2014	September 30, 2014	December 31, 2014	March 31, 2015	June 30, 2015
Separations	85.4%	79.6%	91.7%	79.6%	76.0%
Non-separations	93.8%	91.7%	90.7%	85.7%	89.4%

The predominant reason that individual separation-related nonmonetary determinations did not achieve acceptable quality scores was because of insufficient fact finding. For example, UIA made determinations without sending out fact finding questionnaires, waiting for fact finding questionnaires to be returned by claimants or employers, or obtaining rebuttal statements from claimants or employers, when necessary.

UIA informed us that high workloads experienced during the economic downturn of 2008 and 2009 resulted in significant quantities of backlogged work items which continue to negatively impact its claims processing performance today. Also, UIA stated that its efforts to process the backlogged work items were hampered by significant staffing reductions caused by decreased federal administrative funding after the Great Recession.

After being designated as marginally at risk, UIA implemented, and continues to refine, a new benefits system that automatically completes many different work items that were previously completed manually. Also, UIA reengineered, and



continues to review, evaluate, and reengineer, many of its business processes to make them more effective and efficient. In addition, UIA staff have worked and continue to work significant amounts of overtime to process the large quantity of backlogged work items. Further, UIA provided fact finding training to applicable UIA staff, developed a fact finding desk guide, and increased its monitoring of nonmonetary determination quality. However, continued work is necessary for UIA to consistently meet federal performance standards.

## RECOMMENDATIONS

We recommend that UIA continue to take actions to consistently meet federal performance standards related to initial benefit payments, nonmonetary determination processing, and appeals processing.

We also recommend that UIA continue to improve the quality of its separation-related nonmonetary determinations.

## AGENCY PRELIMINARY RESPONSE

UIA provided us with the following response:

*The UIA agrees and will continue to take actions to consistently meet the federal performance standards. The UIA is currently meeting the standards for all core measures the UIA controls. For example, in the ETA Region 5 Quarterly Performance Report for the period January 1, 2015 through December 31, 2015, the UIA scored 87.6% for All First Payment Promptness and 80.6% for Nonmonetary Separation - Quality, surpassing the acceptable level of performance.*

*For the finding specific to lower authority appeals, this process and allocation of resources for same is not administered by the UIA. However, the UIA will continue to work with its partners to improve timeliness.*

## PROFILING AND REEMPLOYMENT SERVICES

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### BACKGROUND

As a condition of receiving federal UI grant funding, the federal Social Security Act, as amended by Public Law 103-152, requires all states to establish and maintain a system for profiling\* new claimants for regular UI benefits and referring claimants for reemployment services\* (Worker Profiling and Reemployment Services [WPRS] system). Profiling identifies claimants who are most likely to exhaust their UI benefits and need reemployment services to transition to new employment. Reemployment services include job search workshops, job clubs, counseling and testing, referrals to employers, and other similar services. The Social Security Act makes completion of reemployment services mandatory for identified claimants to maintain their eligibility for UI benefits.

### AUDIT OBJECTIVE

To assess UIA's efforts to identify claimants likely to exhaust their UI benefits and refer them to appropriate reemployment services.

### CONCLUSION

Moderately effective.

### FACTORS IMPACTING CONCLUSION

- UIA routinely profiled claimants for regular UI benefits and, excluding a small number of claimants for whom it lacked a county of residence, appropriately referred applicable claimants for reemployment services.
- Reportable condition related to lack of periodically evaluating the WPRS system and updating of its profiling model.
- Reportable condition related to the non-referral of some mandatorily required claimants to reemployment services and insufficient action to ensure that referred claimants attended reemployment services.

\* See glossary at end of report for definition.



**FINDING #7****Evaluation of the WPRS system and review of the profiling model is needed.**

UIA did not periodically evaluate whether its WPRS system effectively reduced program participants' length of unemployment and the amount of UI benefits paid. Also, UIA did not periodically review and update its profiling model to accurately identify the claimants who were most likely to exhaust their regular UI benefits before returning to work.

Federal and state studies have shown that states' WPRS systems varied significantly in their design and effectiveness and recommended that all states periodically evaluate the effectiveness of their programs. The studies also recommended that states periodically update their profiling models to reflect changes in their states' economy, such as the decline of industries or occupations and the availability of new administrative data. Although the studies identified that some states' WPRS systems had little or no impact on reducing the length of time that participants were unemployed, the most effective system evaluated reduced the duration of participants' unemployment by an average of 2.2 weeks compared with nonparticipating claimants with similar risk profiles. With approximately 18,600 profiled UIA claimants receiving reemployment services and an average weekly UI benefit payment totaling \$285 in 2014, annual savings to Michigan with an equally effective WPRS system would total over \$11.7 million. Also, significant financial benefits would accrue to the system participants through increased work-related wages.

**UIA's profiling model not reviewed and updated since 2003.**

UIA's profiling model, in use since 2003, calculates a claimant's probability for benefit exhaustion using a set of weighted variables, including a claimant's educational background, base period wages, prior unemployment experience, occupation at separating employer, and industry. Since its implementation, 19 (20.0%) of 95 industries in Michigan have experienced job increases or job reductions exceeding 25.0%.

In addition, with the implementation of MiDAS in October 2013, UIA now captures more comprehensive occupational and industry data than used in its profiling model. By adjusting its profiling model to account for these changes, UIA could improve the effectiveness of its profiling model and the overall effectiveness of the WPRS system.

UIA informed us that other priorities have precluded it from evaluating the effectiveness of its related profiling model.

**RECOMMENDATIONS**

We recommend that UIA periodically evaluate the effectiveness of its WPRS system.

We also recommend that UIA periodically review and update its profiling model.

**AGENCY  
PRELIMINARY  
RESPONSE**

UIA provided us with the following response:

*As to the first recommendation, the UIA agrees to continue to use federally required reports to measure the efficiency of the WPRS program and the successor program, Reemployment Services and Eligibility Assessment (RESEA). ETA reports (ETA 9048 Profiling and Reemployment Services and ETA 9049 Profiling and Reemployment Services Outcomes) are created by the UIA and submitted to USDOL and are used by all stakeholders to measure program effectiveness.*

*Prior to the OAG's finding, the UIA and the Michigan Workforce Development Agency (MWDA) formed a team to monitor the progress of RESEA. The RESEA team was established for the purpose of increasing services to the customer, ensuring that all USDOL requirements are being met, and ensuring that unemployed workers are scheduled for and attend their RESEA appointments. UIA provides assistance to MWDA to ensure that reports are generated timely and guidelines are being met and provides feedback as to what is currently successful and what can be improved.*

*As to the second recommendation, the UIA agrees with the OAG recommendation. The UIA will seek to update its profiling model in 2016 and ensure that a periodic review is completed.*



**FINDING #8****Claimants were not consistently referred for reemployment services.**


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Action is needed to reduce claimants excused from reemployment services.

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UIA did not consistently refer claimants who met UIA's mandatory reemployment service participation criteria to MWDA for reemployment services. Also, UIA did not take sufficient action to reduce the number of claimants that it excused, without consequence, from mandatory participation in reemployment services after missing their scheduled appointment. As a result of these conditions, some claimants may not have returned to work as soon as otherwise possible, resulting in lost wages to the claimants and increased costs to the UI program.

UIA Manual Section 6345WR(6) requires that, each week, UIA identify new claimants who are not job attached, received their first UI benefit payment within five weeks of their respective benefit year begin date, and met UIA's criteria for mandatory reemployment services. UIA is then responsible for referring identified claimants to MWDA for scheduling reemployment services, mailing notification of the scheduled appointments, and adjudicating nonattendance issues. We reviewed the application of these processes and noted:

- a. For claimants who did not identify their county of residence when applying for benefits, UIA inappropriately excluded the referral for reemployment services. For the 15-month period ended December 31, 2014, we identified 1,638 claimants whom UIA designated as meeting its initial criteria for mandatory reemployment services but whom UIA did not refer for services. We randomly selected and reviewed the case files of 10 claimants from each of the last 3 quarters of 2014 and noted that UIA did not refer 11 (36.7%) of the claimants to reemployment services because UIA did not have the claimants' county of residence recorded in MiDAS. Appropriate reasons existed for UIA to not refer the other 19 claimants.

The county information in MiDAS is used to identify the Michigan Works! Service Center located closest to each claimant's residence.

- b. UIA automatically excused a significant number of claimants from mandatory participation in reemployment services and determined that the claimants were "not ineligible" for UI benefits when the claimants missed their scheduled appointment and informed UIA that they did so because they did not receive the appointment notification.

Section 28(1)(e) of the Michigan Employment Security Act requires that claimants participate in reemployment services as a condition of UI benefit eligibility. For the 15-month period ended December 31, 2014, UIA

excused 1,819 claimants from mandatory participation in reemployment services because the claimants stated that they did not receive the appointment notifications. Although these claimants represented 7.2% of all the claimants scheduled for reemployment services during the period, UIA did not take action to determine why so many claimants did not receive the notifications or take other measures to better ensure that claimants receive the notifications.

For example, UIA could begin sending appointment notifications electronically to those claimants who designate electronic communication as their preferred method of communication with UIA. At the time of our audit, all notifications were mailed via the USPS. This change would have the added benefit of reducing UIA's printing and mailing costs. UIA could also begin to retain and review the appointment notifications that the USPS returns as undeliverable.

## RECOMMENDATIONS

We recommend that UIA consistently refer claimants meeting UIA's mandatory reemployment service participation criteria to MWDA for reemployment services.

We also recommend that UIA take action to reduce the number of claimants excused, without consequence, from mandatory participation in reemployment services after missing their scheduled appointment.

## AGENCY PRELIMINARY RESPONSE

UIA provided us with the following response:

*As to the first recommendation, UIA agrees with the recommendation and has created and implemented a method to ensure that county selections occur for all eligible claimants, through both systematic change and staff review. The current process allows for the claimants to choose their appointment times after they have been notified to participate in re-employment services. In addition, UIA began notifying claimants by sending appointment notifications electronically to claimants who designated electronic communication as their preferred method of communication with UIA.*

*As to the second recommendation, the UIA disagrees with the basis for the recommendation. The UIA investigates inquiries as required by the Michigan Employment Security Act. The UIA does fact finding on the issue and issues a (re)determination with regard to the claimant not attending the appointment for reemployment services or an assertion that the notice was not received. The UIA believes it has proceeded to ensure that those claims were properly reviewed and action, if necessary, was taken.*



## SUPPLEMENTAL INFORMATION

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### **SURVEY DESCRIPTION**

With the assistance of UIA, we identified all claimants who applied for UI benefits during the period October 1, 2013 through November 30, 2014. The survey focused on UIA's claims processing timeliness, customer service, and the clarity and comprehensiveness of UIA's communications.

We e-mailed an online survey to 400 randomly selected claimants. Also, we mailed a survey to 100 randomly selected claimants who had not provided UIA with an e-mail address. We received a total of 106 responses, a response rate of 21.2%.

Following is a summary of the survey results that includes the number and percentage of responses received for each item. The total number of responses for each item may not agree with the total number of responses reported because respondents were instructed to answer only the questions that were applicable to them and one respondent gave multiple answers to one question.

UNEMPLOYMENT INSURANCE AGENCY  
Talent Investment Agency  
Department of Talent and Economic Development  
Summary of Survey Responses - Customer Service

Number of e-mailed responses: 86  
Number of mail responses: 20

1. How did you file your most recent unemployment insurance (UI) claim?

Answer Options	Response Percent	Response Count
In person at an Unemployment Insurance Agency (UIA) office	15%	16
By telephone	15%	16
Over the Internet	70%	73
By mail	0%	0
	<i>answered question</i>	105
	<i>skipped question</i>	1

2. Approximately how long did it take to receive assistance with filing your UI claim?

Answer Options	Response Percent	Response Count
I did not require assistance.	11%	2
I received services immediately.	17%	3
Less than 1 hour	28%	5
Between 1 and 2 hours	28%	5
Between 2 and 3 hours	0%	0
More than 3 hours	17%	3
	<i>answered question</i>	18
	<i>skipped question</i>	88

3. How many call attempts did it take to reach UIA's automated claims filing system?

Answer Options	Response Percent	Response Count
One or two attempts	30%	6
Three or four attempts	20%	4
Five or six attempts	20%	4
Seven or more attempts	30%	6
	<i>answered question</i>	20
	<i>skipped question</i>	86

4. If you were transferred for personal assistance with filing your UI claim, how long did it take to speak with a UIA employee?

Answer Options	Response Percent	Response Count
I spoke with a UIA employee immediately.	0%	0
Thirty minutes or less	30%	6
From 31 to 60 minutes	15%	3
More than 60 minutes	40%	8
I called back later.	5%	1
UIA took my telephone number and called me back.	10%	2
	<i>answered question</i>	20
	<i>skipped question</i>	86



5. Did UIA call you back within the time frame that UIA stated on the telephone?

Answer Options	Response Percent	Response Count
Yes	70%	7
No	30%	3
	<i>answered question</i>	10
	<i>skipped question</i>	96

6. Please rate your satisfaction with the clarity of the questions asked by UIA as part of the claims filing process.

Answer Options	Response Percent	Response Count
Very satisfied	16%	16
Satisfied	48%	49
Neither satisfied nor dissatisfied	20%	20
Not satisfied	8%	8
Very dissatisfied	9%	9
	<i>answered question</i>	102
	<i>skipped question</i>	4

7. Please rate your satisfaction with the timeliness with which UIA processed your claim for UI benefits.

Answer Options	Response Percent	Response Count
Very satisfied	22%	22
Satisfied	33%	34
Neither satisfied nor dissatisfied	21%	21
Not satisfied	12%	12
Very dissatisfied	13%	13
	<i>answered question</i>	102
	<i>skipped question</i>	4

8. For your most recent UI claim, were you eligible for UI benefits?

Answer Options	Response Percent	Response Count
Yes	84%	84
No	16%	17
	<i>answered question</i>	101
	<i>skipped question</i>	5

9. For your most recent UI claim, have you received any UI benefit payments yet?

Answer Options	Response Percent	Response Count
Yes	80%	67
No	20%	17
	<i>answered question</i>	84
	<i>skipped question</i>	22

10. How did you complete the biweekly certification(s) for your most recent UI claim?

Answer Options	Response Percent	Response Count
Over the Internet	64%	46
Via the telephone using UIA's Michigan Automated Response Voice	29%	21
Via the telephone with the assistance of a UIA employee	4%	2
In person at a UIA office	1%	1
Through the mail	1%	1
	<i>answered question</i>	71
	<i>skipped question</i>	37

11. Please rate your satisfaction with the clarity of the questions asked by UIA as part of the biweekly certification process.

Answer Options	Response Percent	Response Count
Very satisfied	23%	16
Satisfied	50%	35
Neither satisfied nor dissatisfied	17%	12
Not satisfied	9%	6
Very dissatisfied	1%	1
	<i>answered question</i>	70
	<i>skipped question</i>	36

12. Please rate your satisfaction with the timeliness with which UIA processed your biweekly certifications.

Answer Options	Response Percent	Response Count
Very satisfied	39%	27
Satisfied	44%	31
Neither satisfied nor dissatisfied	10%	7
Not satisfied	1%	1
Very dissatisfied	6%	4
	<i>answered question</i>	70
	<i>skipped question</i>	36

13. Please rate your satisfaction with the timeliness with which UIA issued a decision related to protests associated with your claim.

Answer Options	Response Percent	Response Count
Very satisfied	12%	12
Satisfied	18%	19
Neither satisfied nor dissatisfied	17%	18
Not satisfied	11%	11
Very dissatisfied	15%	15
Not applicable	27%	28
	<i>answered question</i>	103
	<i>skipped question</i>	3



14. Please rate your level of agreement with the following statement: UIA considered all relevant information when it issued its decision related to the protest of my claim.

Answer Options	Response Percent	Response Count	
Strongly agree	16%	11	
Agree	20%	14	
Neither agree nor disagree	37%	26	
Disagree	11%	8	
Strongly disagree	16%	11	
	<i>answered question</i>		70
	<i>skipped question</i>		36

15. Was the protest resolved in your favor?

Answer Options	Response Percent	Response Count	
Yes	66%	44	
No	34%	23	
	<i>answered question</i>		67
	<i>skipped question</i>		39

16. Please rate your satisfaction with the timeliness with which appeals associated with your claim were heard and a decision rendered.

Answer Options	Response Percent	Response Count	
Very satisfied	6%	4	
Satisfied	17%	12	
Neither satisfied nor dissatisfied	26%	18	
Not satisfied	4%	3	
Very dissatisfied	20%	14	
Not applicable	26%	18	
	<i>answered question</i>		69
	<i>skipped question</i>		37

17. Please rate your level of agreement with the following statement: I was provided with information that clearly defined my responsibilities regarding the appeal of my claim.

Answer Options	Response Percent	Response Count	
Strongly agree	8%	4	
Agree	46%	23	
Neither agree nor disagree	20%	10	
Disagree	16%	8	
Strongly disagree	10%	5	
	<i>answered question</i>		50
	<i>skipped question</i>		56

18. Was the appeal resolved in your favor?

Answer Options	Response Percent	Response Count	
Yes	58%	28	
No	42%	20	
	<i>answered question</i>		48
	<i>skipped question</i>		58

19. Please rate your satisfaction with the clarity of the information available to you related to UIA's claims filing and biweekly certification requirements.

Answer Options	Response Percent	Response Count	
Very satisfied	16%	16	
Satisfied	46%	45	
Neither satisfied nor dissatisfied	24%	24	
Not satisfied	6%	6	
Very dissatisfied	7%	7	
	<i>answered question</i>		98
	<i>skipped question</i>		8

20. Please rate your satisfaction with the comprehensiveness of the information available to you regarding UIA's claims filing and biweekly certification requirements.

Answer Options	Response Percent	Response Count	
Very satisfied	16%	16	
Satisfied	39%	38	
Neither satisfied nor dissatisfied	32%	31	
Not satisfied	7%	7	
Very dissatisfied	6%	6	
	<i>answered question</i>		98
	<i>skipped question</i>		8

21. Please rate your satisfaction with the ease with which you were able to complete your UI claim-related responsibilities.

Answer Options	Response Percent	Response Count	
Very satisfied	16%	16	
Satisfied	50%	49	
Neither satisfied nor dissatisfied	20%	20	
Not satisfied	8%	8	
Very dissatisfied	5%	5	
	<i>answered question</i>		98
	<i>skipped question</i>		8

22. Please rate your satisfaction with the information provided to you regarding your rights and responsibilities as a UI claimant.

Answer Options	Response Percent	Response Count	
Very satisfied	18%	17	
Satisfied	49%	48	
Neither satisfied nor dissatisfied	25%	24	
Not satisfied	6%	6	
Very dissatisfied	2%	2	
	<i>answered question</i>		97
	<i>skipped question</i>		9



23. Please rate your satisfaction with the timeliness of UIA's responses to your claim-related questions and concerns.

Answer Options	Response Percent	Response Count	
Very satisfied	12%	12	
Satisfied	38%	37	
Neither satisfied nor dissatisfied	16%	16	
Not satisfied	7%	7	
Very dissatisfied	11%	11	
Not applicable	14%	14	
	<i>answered question</i>		97
	<i>skipped question</i>		9

24. Please provide your opinion of UIA employees' knowledge of the UI-related information applicable to your claim.

Answer Options	Response Percent	Response Count	
Very knowledgeable	23%	22	
Knowledgeable	38%	36	
Unknowledgeable	8%	8	
Very unknowledgeable	5%	5	
No basis for opinion	26%	25	
	<i>answered question</i>		96
	<i>skipped question</i>		10

25. Were you selected to participate in the Profiling and Reemployment Services Program at Michigan Works!?

Answer Options	Response Percent	Response Count	
Yes, and I participated in the program.	16%	16	
Yes, but I did not participate in the program.	6%	6	
No	77%	75	
	<i>answered question</i>		97
	<i>skipped question</i>		9

26. Did you receive reemployment services that were specific to your individual needs?

Answer Options	Response Percent	Response Count	
Yes	70%	14	
No	30%	6	
	<i>answered question</i>		20
	<i>skipped question</i>		86

27. Please rate your level of agreement with the following statement: The reemployment services that I received from Michigan Works! provided me with valuable skills that allowed me to return to work sooner than I otherwise would have.

Answer Options	Response Percent	Response Count
Strongly agree	6%	1
Agree	6%	1
Neither agree nor disagree	59%	10
Disagree	12%	2
Strongly disagree	18%	3
	<i>answered question</i>	17
	<i>skipped question</i>	89



## AGENCY DESCRIPTION

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The federal Social Security Act of 1935 created the UI program as a joint federal-state partnership, with each state responsible for designing its own program within broad federal guidelines. In response to this Act, UIA was originally created as the Michigan Employment Security Commission by the Michigan Employment Security Act of 1936, being Sections 421.1 - 421.75 of the *Michigan Compiled Laws*. Under Executive Order No. 2014-12, UIA was transferred from the Department of Licensing and Regulatory Affairs to the Talent Investment Agency, Department of Talent and Economic Development.

UIA helps jobless workers and their families by providing up to 20 weeks of regular UI benefits while they seek new employment.

For fiscal year 2014, UIA reported that it received 607,652 new claims and paid UI benefits totaling approximately \$1.1 billion to 370,980 unduplicated claimants. As of April 11, 2015, UIA had 640 permanent full-time employees and 95 limited-term employees. UIA's fiscal year 2014 administrative expenditures totaled approximately \$155.6 million.

## AUDIT SCOPE, METHODOLOGY, AND OTHER INFORMATION

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### AUDIT SCOPE

To examine the program and other records of UIA related to claimant services. We conducted this performance audit\* in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### PERIOD

Our audit procedures, which included a preliminary survey, audit fieldwork, report preparation, analysis of agency responses, and quality assurance, generally covered the period October 1, 2012 through September 30, 2015.

### METHODOLOGY

We conducted a preliminary survey to gain an understanding of UIA's claimant services to establish our audit objectives and methodology. Our preliminary survey included:

- Interviews with various members of UIA management and staff.
- Review of applicable State and federal laws, appropriations acts, rules, regulations, policies, procedures, and manuals.
- Examination of reports from various internal and external audits and reviews of UIA and similar organizations.
- Analysis of management reports.
- Research to identify industry standards, best practices, and headline events.
- Analysis of UIA's internal control\* related to eligibility determinations and UI benefit claims processing.
- Review of selected performance and quality data and statistics.

### OBJECTIVE #1

To assess the clarity and comprehensiveness of UIA's communications with UI claimants.

\* See glossary at end of report for definition.



To accomplish our first objective, we:

- Reviewed UIA's use of various best practices for communication included within USDOL's UI Claimant and Employer Message Toolkit.
- Identified best communication practices used by other states, i.e., Idaho, Kansas, Maine, Oregon, and Texas.
- Reviewed and analyzed UIA efforts to communicate with claimants and potential claimants on UIA's Web sites, publications, and selected forms.
- Analyzed client comment cards collected at UIA's problem resolution offices and UIA's use of claimant satisfaction surveys.
- Evaluated the clarity and comprehensiveness of the instructions given to claimants in the UI benefit application and certification processes.
- Reviewed the effectiveness of UIA's call center at answering and responding to claimant telephone calls.
- Evaluated the clarity and comprehensiveness of UIA's overall communications for 50 randomly selected claimants who applied for UI benefits between October 1, 2013 and November 30, 2014.
- Evaluated the clarity and comprehensiveness of UIA's intentional misrepresentation-related communications for 30 randomly selected claims with an intentional misrepresentation (re)determination issued from October 1, 2013 through March 31, 2015. The 30 claims contained a total of 60 intentional misrepresentation cases.
- Evaluated the clarity and comprehensiveness of UIA's communications related to 25 randomly selected appeals.
- Analyzed UIA's returned mail processing procedures.
- Sent a claimant satisfaction survey to 500 randomly selected claimants.
- Assessed whether UIA ensured that employers complied with claimant notification requirements.

## **OBJECTIVE #2**

To assess UIA's efforts to ensure compliance with USDOL's quality and timeliness standards related to UI claims processing.

To accomplish our second objective, we:

- Analyzed the reports of UIA's consultants and reviewed UIA's implementation of the recommended process improvements included therein.
- Reviewed UIA's processes for monitoring the quality and timeliness of its claims processing functions and its processes for following up identified deficiencies.
- Evaluated the quality and timeliness of UIA's processing of 50 randomly selected claims, 30 randomly selected claims with intentional misrepresentation, and 30 randomly selected claims with appeals.
- Reviewed UIA's progress at reducing its backlogged work items.
- Analyzed UIA's performance over time relative to UI Performs performance standards.
- Evaluated the sufficiency of training provided to claims examiners.

### **OBJECTIVE #3**

To assess UIA's efforts to identify claimants likely to exhaust their UI benefits and refer them to appropriate reemployment services.

To accomplish our third objective, we:

- Reviewed the history of how and when UIA established its profiling methodology.
- Interviewed UIA, MWDA, and USDOL's ETA employees to obtain an understanding of UIA's and MWDA's applicable processes and controls.
- Reviewed memorandums of understanding between UIA and MWDA.
- Reviewed policies, procedures, and other authoritative guidance.
- Identified claimants with an increased risk of exhausting their UI benefits before finding a job for the five quarters ended December 31, 2014 and determined if UIA referred the claimants to MWDA for reemployment services.
- Reviewed a random selection of 30 claimants not referred to reemployment services to determine if there was a valid reason for nonreferral.



- Determined if UIA appropriately sanctioned claimants who were referred to, but did not attend, reemployment services.

**CONCLUSIONS**

We base our conclusions on our audit efforts and the resulting material conditions and reportable conditions.

When selecting activities or programs for audit, we direct our efforts based on risk and opportunities to improve State government operations. Consequently, we prepare our performance audit reports on an exception basis.

**AGENCY  
RESPONSES**

Our audit report contains 8 findings and 13 corresponding recommendations. UIA's preliminary response indicates that it agrees with 12 recommendations and disagrees with 1 recommendation.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion at the end of our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require an audited agency to develop a plan to comply with the recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

## GLOSSARY OF ABBREVIATIONS AND TERMS

---

adjudicate	A process by which UIA reviews evidence to come to a decision that determines rights and obligations of the parties involved.
benefit year	The period of 52 consecutive calendar weeks beginning with the first week the claim was filed.
ETA	Employment and Training Administration.
intentional misrepresentation	An occasion when a person makes a false statement or representation knowing it to be false, or knowingly and willfully with intent to defraud fails to disclose a material fact, to obtain or increase a benefit or other payment.
internal control	The plan, policies, methods, and procedures adopted by management to meet its mission, goals, and objectives. Internal control includes the processes for planning, organizing, directing, and controlling program operations. It also includes the systems for measuring, reporting, and monitoring program performance. Internal control serves as a defense in safeguarding assets and in preventing and detecting errors; fraud; violations of laws, regulations, and provisions of contracts and grant agreements; or abuse.
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program.
MiDAS	Michigan Integrated Data Automated System.
mission	The main purpose of a program or an entity or the reason that the program or the entity was established.
MiWAM	Michigan Web Account Manager.
MWDA	Michigan Workforce Development Agency.



nonmonetary determination	A decision made by an initial authority based on facts related to an issue detected that has the potential to affect a claimant's past, present, or future benefit rights and for which a determination of eligibility was made. Nonmonetary eligibility determination criteria include having a qualifying job separation reason, being able and available to work, seeking work, and registering for work with the State's workforce agency.
OAG	Office of the Auditor General.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.
profiling	A system to identify and rank or score UI claimants by their potential for exhausting their benefits for referral to appropriate reemployment services.
reemployment services	Services including job search assistance and job placement services, such as counseling, testing, and providing occupational and labor market information, assessment, job search workshops, job clubs, and referrals to employers, and other similar services.
reportable condition	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal control that is significant within the context of the audit objectives; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant agreements; and significant abuse that has occurred or is likely to have occurred.
RESEA	Reemployment Services and Eligibility Assessment.
social media	Forms of electronic communication, using Web sites and applications, through which users create and share content.
TIA	Talent Investment Agency.
UI	unemployment insurance.

UIA	Unemployment Insurance Agency.
USDOL	U.S. Department of Labor.
USPS	United States Postal Service.
WPRS	Worker Profiling and Reemployment Services.





# **APPENDIX 9**



# New unemployment system flags more fraud, but advocates say many are innocent

By REBECCA KRUTH • JUL 24, 2015

f [Share \(http://facebook.com/sharer.php?](http://facebook.com/sharer.php?u=http%3A%2F%2Fwww.tinyurl.com%2Fyye74vbt&t=New%20unemployment%20system%20flags%20more%20fraud%2C%20but%20advocates%20say%20many%20are%20innocent)

[u=http%3A%2F%2Fwww.tinyurl.com%2Fyye74vbt&t=New%20unemployment%20system%20flags%20more%20fraud%2C%20but%20advocates%20say%20many%20are%20innocent](http://facebook.com/sharer.php?u=http%3A%2F%2Fwww.tinyurl.com%2Fyye74vbt&t=New%20unemployment%20system%20flags%20more%20fraud%2C%20but%20advocates%20say%20many%20are%20innocent)



Unemployment fraud cases are on the rise in Michigan.

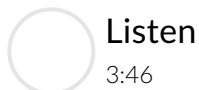
Advocates say the state's automated unemployment insurance system is snagging innocent people for fraud without any human oversight.

Being wrongly accused of fraud can mean many months, lots of money and a hearing before an administrative judge to clear your name.

([https://mediad.publicbroadcasting.net/p/michigan/files/styles/x\\_large/public/201507/Velas.JPG](https://mediad.publicbroadcasting.net/p/michigan/files/styles/x_large/public/201507/Velas.JPG))

David Vela and his wife, Klaudia.

CREDIT REBECCA KRUTH



Listen

3:46

*Listen to the full story.*

That's exactly what happened to George Patterson of Taylor, who saves everything.

"I've been accused of being a pack rat," he said. "I have a lot of my paperwork from 10, 15 years ago."

He uses a little ledger book to track the different jobs he does as a union millwright. When he was laid off in 2013, he used it to track his unemployment benefits.

"In that book I put down that I collected unemployment that week, how much I collected, confirmation numbers and everything else," he said.

After Patterson went back to work, he got a letter from the state Unemployment Insurance Agency saying he had unreported earnings while he was collecting benefits.

"Basically, they told me I committed fraud, and I owed them \$18,000," he said.

Even though Patterson knew he'd done everything right when he was on unemployment, he combed his records, trying to find if he'd made a mistake.

He hadn't.

Patterson decided to appeal the charges. He used \$2,000 he'd set aside to pay his taxes and hired an attorney to help him appeal the charges.

At the hearing, an administrative judge ruled in Patterson's favor.

There wasn't any evidence to show he'd committed fraud.

Steve Gray, director of the Michigan Unemployment Insurance Project, says cases like Patterson's are not unusual.

"We're seeing case after case after case with somebody who's done everything they're supposed to do, been very honest with the system, and yet they've ended up being charged with fraud," he said.

Gray says he noticed a big uptick in fraud cases right around the time the UIA implemented a new system to automate most of the unemployment process.

"We're calling it robo-fraud, because the computer is basically making the determination that there's fraud," Gray said.

The new system is called MiDAS.

It scans the unemployment database and looks for cases where the information an employee provided when they applied for benefits doesn't match the information their employer provides.

When the system finds one, the case gets flagged.

"Then, very quickly and without any human intervention, it kicks out a fraud determination against [a claimant]," said Gray.

In 2014, the state Unemployment Insurance Agency established over 26,000 cases of unemployment fraud, more than five times the yearly average.

In Michigan, a fraud charge comes with a penalty four times the amount a claimant was allegedly overpaid. Plus interest.



A claimant has a 30-day window to appeal. After that, the charge is final and the UIA can garnish wages and tax returns.

"The agency doesn't have to go to court like everybody else does in order to get a garnishment order," said Gray. "[When] you combine the four-times penalty, and the robo-fraud, and the administrative garnishment, you get what happened to David Vela."

Vela, of Garden City, collected unemployment for nearly a year after he was laid off from his job as an electrician.

He didn't even know there was a fraud charge against him until money started disappearing from his paycheck.

"It was a quarter of my pay every week," said Vela. "I had to work, thank God I was able to, six days a week, 12 hours a day, just to be able to pay the bills."

Vela never had a chance to appeal his fraud determination, because the UIA sent it to the wrong address, two years before his wages were garnished.

He had to file a late protest, and the agency refused to stop garnishing his wages in the months leading up to his hearing.

The stress took a big toll on him. And his wife, Klaudia.

“To wake up and realize he’s not next to you, [you wonder] where is he? He’s out on the couch, thinking and analyzing himself, wondering what’s going to happen,” she said. “That’s the worst part.”

Vela had his hearing in April, and an administrative judge cleared his name. Like George Patterson's case, there wasn't any evidence to show he'd committed fraud.

The UIA says it takes cases like Vela's and Patterson's seriously, and it's been adjusting the new system since its implementation.

Meanwhile, Patterson got another fraud determination in June for the same period of unemployment.

He's still waiting to find out when his next appeal hearing will be.

**TAGS:** UNEMPLOYMENT (/TERM/UNEMPLOYMENT)

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u=http%3A%2F%2Fwww.tinyurl.com%2Fyye74vbt&t=New%20unemployment%20system%20flags%20more%20fraud%2C%20but?

## RELATED CONTENT

# **APPENDIX 10**



**State of Michigan Talent Investment Agency  
Unemployment Insurance**

# **UNEMPLOYMENT BENEFITS IN MICHIGAN**

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## **A Handbook for Unemployed Workers**

For Help Call Toll Free: 1-866-500-0017

For TTY Users: 1-866-366-0004

**July 2018**

# PROTEST AND APPEAL RIGHTS



If you are found to be disqualified or ineligible, and you disagree with the decision, you have the right to protest a determination or appeal a redetermination.

## Protest

A Determination is the first level of UI decision making. If the Determination is not in your favor, you have the right to protest. A protest must be received within 30 days from the mail date on the Determination. When protesting late, you should include an explanation of why the protest is late. The correct address and fax number for your protest will be included on the Determination.

## Appeal

A Redetermination is issued after a protest is received by UI. If the Redetermination is not in your favor, you have the right to appeal. The correct address and fax number for your appeal will be included on the Redetermination. When appealing late, you should include an explanation of why the request for appeal is late.

Appeals are handled by the Michigan Administrative Hearings System (MAHS). You will receive a Notice of Hearing by mail. MAHS is not a part of UI, so all documentation needs to be submitted to the office listed on your Notice of Hearing. After receiving the notice, you will be scheduled for a hearing with an administrative law judge (ALJ). Other interested parties, representatives from UI and your employer will also receive a notice. Hearings may occur by phone or in person. See your Notice of Hearing for more details.

## Advocacy Information

After you appeal your redetermination to the MAHS, an advocate may be able to assist you at the hearing. This service is free to unemployed workers and employers. However, if the administrative law judge finds that you

have committed fraud you must pay the cost of the advocacy services. If you would like the assistance of an advocate, once you have received your *Notice of Hearing*, call the Advocacy Program at 1-800-638-3994. Some restrictions in service may apply.

## Michigan Compensation Appellate Commission

Once an ALJ has issued a decision, you will receive it by mail. If the decision is not in your favor, you have the right to appeal to the Michigan Compensation Appellate Commission (MCAC). This appeal is required to be filed in writing and can be received by mail or fax. See your decision issued by the ALJ for the correct address and fax number for your appeal. An appeal of the ALJ's decision must be received by MCAC within 30 days from the mail date of the decision.

## Circuit Court

You can appeal a decision from the MCAC to circuit court. However, filing at circuit court does require filing fees. Any costs or fees associated with appealing to the circuit court are then paid by the person requesting the appeal. To be on time, any appeal to a circuit court must be received within 30 days from the mail date on the MCAC decision.



## IMPORTANT



Continue to certify on time using MiWAM or MARVIN during your reporting week(s) until you return to full-time work. This will protect your right to receive benefits if the issue on your claim is settled in your favor. If you win your case, you will only be paid for the weeks you reported on time.



# **APPENDIX 11**



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY  
UNEMPLOYMENT INSURANCE AGENCY

JEFF DONOFRIO  
DIRECTOR

Please write your name and address

MIN:

Check box  
if protesting

☐

**Protest of a Determination**

(This is a Protest form. If you want to appeal a Redetermination please use other side.)

**Right of Protest**

If you disagree with this determination you have the right to protest requesting a redetermination. If your protest is filed after the deadline, you must include the reason your protest is late in your statement. You can also attach copies of any documents that support your protest.

You can submit your protest online at [www.michigan.gov/uia](http://www.michigan.gov/uia) sign into MILogin to access your MiWAM and upload documents. If you wish to protest in writing, complete Form UIA 1733, *Protest of a Determination*. This form is located on the website under the Forms link. Include your name, case number and social security number or Michigan Identification Number (MIN) on documents submitted with your protest. Fax the completed Form UIA 1733 and any supporting documents to 1-517-636-0427 or mail to Unemployment Insurance, P.O. Box 169, Grand Rapids, MI 49501-0169. If you fax or mail your protest, it must be signed.

1. Do you have information that you did not provide prior to the Determination? Yes ☐ No ☐  
If yes, provide it now.

2. Date Determination was issued: \_\_\_\_\_  
Date on Determination

I protest for the following reasons:

**If Applicable:** I did not protest within 30 calendar days of when the determination was mailed because:

**Certification:** I certify that the information I have reported is true and correct. I understand that if I intentionally make a false statement, misrepresent facts or conceal material information, I may be required to pay damages and could be subject to criminal prosecution.

Signature \_\_\_\_\_

Date \_\_\_\_\_

If your address changes, it is important to update it with the Unemployment Insurance Agency.

If you have questions, you may contact us through your MiWAM account or by calling 1-866-500-0017. For telephone or Local Office hours of operation, visit [www.michigan.gov/uia](http://www.michigan.gov/uia). TTY service is available at 1-866-366-0004.



★ 0 1 7 3 3 1 9 0 6 ★

UIA is an equal opportunity employer/program.

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UIA 1733  
(Rev. 06-19)



Authorized by  
MCL 421.1 et seq.

GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY  
UNEMPLOYMENT INSURANCE AGENCY

JEFF DONOFRIO  
DIRECTOR

Please write your name and address

MIN:

Check box  
if appealing

☐

## Appeal of a Redetermination

(This is an Appeal form. If you want to protest a Determination, please use other side.)

### Right of Appeal

If you disagree with this redetermination you have the right to appeal requesting a hearing before an administrative law judge. If your appeal is filed after the deadline, you must include the reason your appeal is late in your statement. You can also attach copies of any documents that support your appeal.

You can submit your appeal online at [www.michigan.gov/uia](http://www.michigan.gov/uia) sign into MILogin to access your MiWAM and upload documents. If you wish to appeal in writing, complete Form UIA 1733, *Appeal of a Redetermination*. Include your name, case number and social security number or Michigan Identification Number (MIN) on documents submitted with your appeal. Fax the completed form UIA 1733 and any supporting documents to 1-616-356-0739 or mail to Unemployment Insurance, P.O. Box 124, Grand Rapids, MI 49501-0124. If you fax or mail your appeal, it must be signed.

1. Do you have information that you did not provided prior to the redetermination? Yes ☐ No ☐  
If yes, provide it now.

2. Date redetermination was issued: \_\_\_\_\_  
Date on Redetermination

I appeal for the following reasons:

**If Applicable:** I did not appeal within 30 calendar days of when the redetermination was mailed because:

**Certification:** I certify that the information I have reported is true and correct. I understand that if I intentionally make a false statement, misrepresent facts or conceal material information, I may be required to pay damages and could be subject to criminal prosecution.

Signature \_\_\_\_\_

Date \_\_\_\_\_

### Important Advocacy Information

An Advocate may be able to assist you at the hearing. This service is free. Some restrictions may apply. After you receive your *Notice of Hearing*, call the Advocacy Program at 1-800-638-3994 to request an advocate. Provide the Appeal Number from your *Notice of Hearing* form. If the administrative law judge (ALJ) finds that you have committed an intentional misrepresentation you must pay the cost of the advocacy fees.



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UIA is an equal opportunity employer/program.

# **APPENDIX 12**





# MiWAM

MICHIGAN WEB ACCOUNT MANAGER  
UNEMPLOYMENT INSURANCE

# Toolkit

*For Claimants*



LEO

# FREQUENTLY ASKED QUESTIONS

**Q: What happens when I register for MiWAM?**

**A:** When you register for MiWAM, you will be granted unlimited access to your MiWAM account immediately. You can access your account 24 hours a day, seven days a week. MILogin for Citizens is a single sign on process that connects you to MiWAM and Pure Michigan Talent Connect systems.

**Q: Does my password expire?**

**A:** Yes, your password expires every 13 months. As a result, you will be required to change it after one year.

**Q: What should I do if I forget my username or need to reset my password?**

**A:** Click on the hyperlinks “Forgot your User ID?” or “Forgot your password?” You can use the automatic functions regarding a forgotten User ID and/or password the majority of the time. Both User ID and password automatic recovery processes use the Security Option(s) that you chose during the MILogin registration process. If you need further assistance, contact 1-866-500-0017 to speak with a customer service representative.

**Q: Can I come back to a claim that I began filing and finish it later?**

**A:** MiWAM allows you to save your claim and complete it later during the same calendar week, by clicking the Save and finish later button. You will receive a confirmation number and a claim filing number. Click the “Find a Saved Claim” hyperlink to complete the claims filing process before 11:59 PM on Saturday so your claim will be considered timely. Any incomplete claim will be discarded after this deadline.

**Q: How do I enter the Occupation Code when filing a claim through MiWAM?**

**A:** Click on the Search Code and type a key word or words that describe your position (i.e., truck driver, teacher or waitress). Press the enter key from your keyboard and a list of choices will appear. If you cannot find an exact match, choose the occupation code that best fits. Make your choice by clicking the blue hyperlink next to your selection. You can find these instructions when filing a claim by clicking the information icon in the Occupation Code field.

**Q: Can I protest a determination or respond to UI’s correspondence using MiWAM?**

**A:** Yes. Access the Determinations tab to either protest a determination or appeal a redetermination. Responding to any open fact-finding issues can be done by clicking on the Fact Finding sub-tab to see pending questionnaires.

**Q: Who do I contact if I need help?**

**A:** If you have questions about MiWAM or need help with your unemployment claim, call 1-866-500-0017 to speak with a customer service representative.